

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

James A. Burk, Jr.,	:	
et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No. 2:20-cv-6256
	:	Judge James L. Graham
City of Columbus,	:	Magistrate Judge
et al.,	:	Chelsey M. Vascura
	:	
Defendants.	:	
	:	

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VIDEOTAPED DEPOSITION OF JAMES A. BURK, JR.

- - - - -

Taken at Cooper Elliott
305 West Nationwide Boulevard
Columbus, OH 43215
June 9, 2023, 9:02 a.m.

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Spectrum Reporting LLC
400 South Fifth Street, Ste. 201
Columbus, Ohio 43215
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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS:

Cooper Elliott
305 West Nationwide Blvd.
Columbus, OH 43215
By Jonathan N. Bond, Esq.

ON BEHALF OF DEFENDANTS:

City of Columbus, Department of Law
77 N. Front Street
Columbus, OH 43215
By Alexandra N. Pickerill, Esq.
Samantha M. Hobbs, Esq.

ALSO PRESENT:

Gregory Castetter - Videographer

Friday Morning Session

June 9, 2023, 9:02 a.m.

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S T I P U L A T I O N S

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It is stipulated by counsel in attendance that the deposition of James A. Burk, Jr., a Plaintiff herein, called by the Defendants for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

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I N D E X

Examination By	Page
Ms. Pickerill - Cross	6
Exhibits	Page
Exhibit 4 - PRB document, 5-5-2016	27
Exhibit 5 - Last Chance Agreement	28
Exhibit 6 - Notification of Personnel Action	32
Exhibit 7 - Letter, 11-2-2021	50
Exhibit 8 - Letter, 7-16-2021	54
Exhibit 9 - Defendants' Fed. R. Civ. P. 31 Deposition By Written Question To The United States Bureau of Alcohol, Tobacco, Firearms, and Explosives	78
Exhibit 10 - Settlement Agreement	84
Exhibit 11 - Position Description	93
Exhibit 12 - Burk Interview transcript, 8-14-2020	116
Exhibit 13 - 911 audio	138
Exhibit 14 - Burk identifying documents	148
Exhibit 15 - Fihe's body cam	164
Exhibit 16 - Administrative Interview	225

(Electronic exhibits attached. Originals returned
to Ms. Pickerill.)

1 THE VIDEOGRAPHER: The following
2 deposition of James A. Burk, Jr., is being taken
3 on June 9th, 2023 at 305 West Nationwide
4 Boulevard, Columbus, Ohio in the case of James A.
5 Burk, Jr., et al., versus City of Columbus,
6 et al., in the United States District Court,
7 Southern District of Ohio, Case No. 2:20-cv-6256.

8 The court reporter is Stacy Upp, and
9 the videographer is Gregory Castetter. This
10 deposition is being recorded by Spectrum Reporting
11 LLC.

12 We are on the record at 9:02. Will
13 counsel please announce their presence.

14 MR. BOND: Jonathan Bond for
15 plaintiffs.

16 MR. PICKERILL: Alexandra Pickerill for
17 defendants.

18 MS. HOBBS: Samantha Hobbs for
19 defendants.
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JAMES A. BURK, JR.

being first duly sworn, testifies and says as follows:

CROSS-EXAMINATION

BY MS. PICKERILL:

Q. Good morning, Mr. Burk.

A. Morning.

Q. My name is Allie Pickerill. I represent the City of Columbus and the officers in this lawsuit. I'm just going to ask you some questions to try to learn more information about the lawsuit that you're bringing and sort of all the facts that kind of go around that.

If you ever have any questions about my questions, if they don't make sense, just let me know. I will try and think of a better way to ask it or maybe it was a bad question to begin with and we'll -- we'll figure out a better way to go forward.

A. Okay.

Q. So just as long as you let me know. If you do answer a question, I'm going to assume that you did understand the question that I asked. The

1 only -- the other big thing is we do have a court
2 reporter here who's typing down everything that we
3 say, so we'll have to try and be careful not to
4 talk over each other. I know I'm -- I do that
5 sometimes too. So just we'll both try and do our
6 best.

7 A. Okay.

8 Q. All right. If you need a break at any
9 time, just let me know. That's not a problem.
10 You can talk to your attorneys, take whatever
11 breaks you need. All I ask is that if there is a
12 question pending that we get an answer to it
13 before we break, okay?

14 A. Yes.

15 Q. Okay. Could you please go ahead and
16 give us your full name, spelling your first and
17 last?

18 A. James Alan Burk, Jr. J-A-M-E-S,
19 A-L-A-N, B-U-R-K, Jr.

20 Q. Have you ever had your deposition taken
21 before?

22 A. I believe so, yes.

23 Q. Okay. In what context?

24 A. I believe it was in -- as law

1 enforcement.

2 Q. Okay.

3 A. The context as -- as a city police
4 officer.

5 Q. Okay. In relation to, like, a case
6 that you were working?

7 A. Yeah. It was something of that nature.

8 Q. Okay.

9 A. I mean, this is 20-plus years ago.

10 Q. Did that -- probably working as a
11 police officer, did that ever require you to
12 testify in court?

13 A. Absolutely.

14 Q. Okay. Did you ever testify in court
15 for any nonpolice matters?

16 A. No.

17 Q. Okay.

18 A. Not that I'm aware of.

19 Q. Did you ever testify in court related
20 to an ATF matter?

21 A. Yes.

22 Q. Okay. Just sort of, like, throughout
23 the course of your business, is that something you
24 would have to do?

1 A. Testimony in support of -- of cases,
2 correct.

3 Q. Yeah.

4 A. That were going to trial or in some
5 type of hearing.

6 Q. Okay. Have you ever yourself before
7 been part of a lawsuit?

8 A. No. Not that I'm aware of.

9 Q. Okay. Never -- nobody's ever sued you
10 that you know of?

11 A. No.

12 Q. And you've never sued anyone else --

13 A. No.

14 Q. -- before this?

15 Did you do anything to prepare for this
16 deposition?

17 A. I mean, we were -- we live out of
18 state, so, no, not really. But I mean when we got
19 in here, I met with -- obviously, met with my
20 attorneys and I watched the video of the incident
21 for the first time ever. And the audio, I
22 listened to the audio. And then -- yeah, and then
23 there was some -- some documentation that I
24 perused through.

1 Q. Okay.

2 A. And that was pretty much it.

3 Q. Okay. Do you know what documents you
4 looked at to prepare?

5 A. I believe there was a -- some ATF
6 documents. I can't remember exactly what they
7 were.

8 Q. Okay.

9 A. But they were just had to do with the
10 incident itself and some either statements or
11 possibly what I had -- had explained at some point
12 to ATF personnel and -- and stuff like that
13 regarding the incident.

14 Q. Okay. So, like, ATF documents. Any
15 CPD documents?

16 A. I don't know if I remember actual CPD
17 documents that were there. But I -- obviously,
18 the video footage, CPD stuff there, the audio, and
19 -- and there might have been something else on the
20 video screen, something to do with, like, a
21 printout or -- or -- it was inside a police car.

22 Q. Okay. I'm just going to ask some
23 questions about you.

24 A. Uh-huh.

1 Q. Can you tell me when your birthday is?

2 A. August 8th, 1969.

3 Q. Okay. And where are you living right
4 now?

5 A. Tennessee.

6 Q. Okay. What part of Tennessee?

7 A. Middle Tennessee.

8 Q. Middle Tennessee.

9 Okay. How long have you been living in
10 Tennessee?

11 A. Approximately going on one year.

12 Q. Okay. How are you liking it down
13 there?

14 A. It's quiet.

15 Q. Been down there about one year. Where
16 were you before Tennessee?

17 A. Loveland, Ohio.

18 Q. Okay. And do you live in Tennessee
19 with your wife?

20 A. Yes, I do.

21 Q. Okay.

22 A. And my son.

23 Q. Does anyone else live there with you?

24 A. No.

1 Q. Was -- did your wife live in Loveland
2 as well?

3 A. Yes, she did.

4 Q. Okay. When were you all married?

5 A. 2016.

6 Q. '16.

7 When was your son born?

8 A. January 26th, 2021.

9 Q. Okay. How long had you all lived in
10 Loveland?

11 A. I had lived in -- I had lived in
12 Loveland, oh, 16, going on 17 years, so 18 --
13 probably almost 18 years.

14 Q. Okay.

15 A. And she has been with me for seven.

16 Q. Okay.

17 A. I resided there before we got married.

18 Q. Are you currently employed?

19 A. No.

20 Q. Okay. Did -- where did you go to high
21 school?

22 A. I went to high school at Gavit High
23 School.

24 Q. Gavit?

1 A. Yeah. In northwest Indiana.

2 Q. Okay. Did you go to college after
3 that?

4 A. I had kind of the prolonged college
5 experience. I went to college after high school,
6 then went in the military, then became a police
7 officer, then finished my college education.

8 Q. Where did you start college?

9 A. Indiana University.

10 Q. What were you studying?

11 A. Criminal justice.

12 Q. Okay. How far into that degree did you
13 get?

14 A. I have my bachelor's in criminal
15 justice.

16 Q. Okay. So how far did you get the first
17 time?

18 A. Two years, you know, kind of halfway.

19 Q. Oh.

20 A. Halfway through.

21 Q. And you mentioned you went to the
22 military.

23 A. And then I went -- then I joined the
24 Marine Corps for four years --

1 Q. Okay.

2 A. -- honorably discharged. And then when
3 I came out, I started to go back to school, but
4 was able -- eventually went to a job fair and put
5 in my information and in the process took off for
6 the -- for a city police department, and I pursued
7 that. And then once I was established in that
8 career, then finished up my education because I
9 knew I wanted to eventually get to the federal
10 level, which I -- which of course required a
11 degree.

12 Q. Uh-huh.

13 A. So --

14 Q. What police force were you with?

15 A. The Hammond.

16 Q. Hammond. Is that in Indiana?

17 A. Indiana, yes.

18 Q. Okay. How long were you with the
19 Hammond police force?

20 A. Just under -- just under 10 years.

21 Q. Okay. And what kind of positions did
22 you have with the police force there?

23 A. I was a -- well, I started out as a
24 patrol officer. I was a -- I spent also time as a

1 S.W.A.T. officer, firearms instructor, defensive
2 tactics instructor. I fit a lot of bills. And
3 then I was also an ATF task force officer; I ran
4 their gun recovery program.

5 Q. Uh-huh. Is that how you got interested
6 in ATF?

7 A. As an -- I had a working relationship
8 with the local ATF office as part of my duties for
9 the police department, which segued into getting
10 an ATF task force position. Yeah, obviously, you
11 know, my relationship and, you know, what I
12 brought to the table, my experience and just --

13 Q. Uh-huh.

14 A. They -- at that time, ATF was hiring
15 kind of on a -- it's called Schedule B. And
16 that's kind of like placed on a referral program
17 from within the agency. And obviously, you know,
18 I was highly referred, so I was able to get in
19 contact with -- with the initial hiring process
20 and then it was 18 months of everything screening,
21 medical, interviews, testing, all that kind of
22 stuff. And then, you know, Congressional budget
23 issues, and then eventually got -- got the call.

24 Q. Okay. I'd like to talk to you about

1 your time with ATF a little bit. ATF is the
2 United States Bureau of Alcohol, Tobacco, Firearms
3 and Explosives, right?

4 A. Yes, it is.

5 Q. What year did you start working there?

6 A. 2004 I was hired.

7 Q. Okay.

8 A. July to be exact, summer.

9 Q. We'll be exact.

10 What were your -- what was your
11 assignment? What were your roles when you
12 initially started?

13 A. Initially started as a special agent
14 assigned to the Cincinnati field office.

15 Q. Is the special agent title a sort of
16 broad one or are there other titles within ATF?

17 A. Well, you're either on the law
18 enforcement side of the house or you're on the
19 civilian side of the house. I mean, we have other
20 positions within the agency that are non law
21 enforcement.

22 Q. Okay.

23 A. So those are, you know, support
24 positions, you know, intel positions and stuff

1 like that. But as far as there's an inspector's
2 side of the house that does the regulatory arm,
3 which are not special agents. So the special
4 agents do the criminal investigative work.

5 Q. Okay. Is there any --

6 A. The actual law enforcement.

7 Q. Okay. Is there any hierarchy within
8 the special agents or --

9 A. Oh, absolutely. There's a management
10 structure going all the way down -- or, you know,
11 you know, the director or acting director is what
12 we always had for a long time. And then there's
13 deputy -- or assistant directors and it -- it's a
14 -- it's a normal hierarchy like you'd have in any
15 kind of business setting.

16 Q. Okay.

17 A. And then it trickles down, you know,
18 you have divisions and divisions have SACs and
19 then they have two ASACs and then each office has
20 a resident agent in charge, and then he has field
21 agents that work for that office. So there's --
22 there's a supervisory chain of command and they're
23 all agents.

24 Q. Okay.

1 A. By trade, they're all agents. But now
2 they're not in the field, they're management.

3 Q. Uh-huh. Uh-huh.

4 I appreciate you kind of fleshing that
5 out for me. I hadn't fully understood sort of
6 what the hierarchy was.

7 Do you remember in August of 2015 what
8 your roles and responsibilities with ATF were?

9 A. I think -- 2015. I was obviously
10 always a special agent. And at that time I
11 believe I was the division tactical advisor.

12 Q. What does that mean?

13 A. It means I -- all operational-type
14 planning that are conducted by the -- in this case
15 the Columbus field division would be -- would be
16 submitted to me for review to determine tactical
17 soundness --

18 Q. Uh-huh.

19 A. -- of the operation before it takes
20 place. And part of those responsibilities were
21 also the quarterly tactical training for all the
22 agents in the division. So I led the training and
23 for -- for two quarters of the four of the year, I
24 ran the firearms training, I trained instructors,

1 and I was kind of all things that had to do with
2 tactics instruct, whether it be physical,
3 firearms, was -- was all facilitated and oversaw
4 by me.

5 Q. Uh-huh. So were you still stationed at
6 the Cincinnati field office?

7 A. I worked for the division, but, yeah,
8 that's always where it's kind of been my home
9 office space. But in that time, I was -- had
10 office space there, but I was working more in a
11 divisional capacity throughout the division, it's
12 just you got to call home somewhere. So it has
13 always been the Cincinnati field office.

14 Q. Okay.

15 A. Which had to do with my proximity where
16 I lived and they -- the space was there.

17 Q. Uh-huh.

18 A. So --

19 Q. So when you say it was more a
20 divisional --

21 A. Position.

22 Q. -- position, what area did that
23 include?

24 A. The southern judicial district of

1 Indiana and the southern judicial district of
2 Ohio. So figure everything from pretty much
3 Columbus south and everything from including
4 Indianapolis south.

5 Q. Okay.

6 A. For two states.

7 Q. Was your supervisor in Cincinnati?

8 A. Yes.

9 Q. Okay.

10 A. My -- my supervisor as the DTA was not
11 the Cincinnati supervisor at the time. Or, I
12 mean, was not the -- my supervisor at the time. I
13 would have answered to the division ASAC.

14 Q. Okay. Could you tell me first what DTA
15 means?

16 A. Division tactical advisor.

17 Q. Okay. And ASAC?

18 A. Assistant special agent in charge.
19 He's the -- he's one of two number twos at the
20 division level.

21 Q. Okay.

22 A. Which cover that -- both of those
23 judicial districts.

24 Q. Okay. And that's who you would have --

1 A. That's who I would --

2 Q. -- reported to?

3 A. If I had to answer to somebody, it
4 would have been the ASAC.

5 Q. Okay.

6 A. Direct -- would have been my next line
7 so to say.

8 Q. Okay.

9 A. Because I was working at the division
10 level, not at the field office level --

11 Q. Okay.

12 A. -- for management purposes.

13 Q. Gotcha.

14 So if you ever needed to report to
15 someone, the ASAC is who you --

16 A. Is who I would confer with. I mean, I
17 believe the ASAC is who gave me my annual reviews
18 and stuff like that. It was not a -- you know,
19 they're -- you know, he knew more about what I was
20 doing, you know, so to say than the -- the agent
21 -- the resident agent was managing his field
22 agents in their case work.

23 Q. Right.

24 A. I was doing things for the whole

1 division. So that was -- that was kind of how it
2 was structured at the time.

3 Q. Okay.

4 A. Even though I had like a direct
5 relationship with the supervisor in Cincinnati
6 because he was my supervisor until I started doing
7 things for the division.

8 Q. Uh-huh.

9 A. So I broke away from the case work to
10 do the training aspect.

11 Q. So the ASAC just kind of has a better
12 thumb on what's going on sort of in your whole
13 area as opposed to just in Cincinnati?

14 A. Well, the RACs for each field office,
15 they're the boots on the ground supervisor for all
16 their agents, for each agent assigned to that
17 office. Those RACs, depending on -- will answer
18 to one of two ASACs.

19 Q. Okay.

20 A. So the ASACs manage the RACs, the RACs
21 manage the field agents. The ASACs are managed by
22 the SAC, the main guy for each division --

23 Q. Okay.

24 A. -- throughout the country. There's one

1 for each division.

2 Q. Oh, one SAC for each division?

3 A. For each division.

4 Q. Okay.

5 A. So there's multiple SACs throughout the
6 country. Those SACs then, you know, usually
7 answer to a deputy assistant director that is
8 geographically covering parts of a country.

9 Q. Sure.

10 A. Our country. So it's -- it kind of is
11 structured that way. And those DADs answer to
12 likely the -- the -- you know, the assistant
13 director and then there is the director, which is
14 kind of like the director of any federal agency,
15 he's the top dog.

16 Q. Okay. Okay. So I'm going to -- I'm
17 going to ask you more questions I think about the
18 organizational structure I think later on.

19 But I'm going to go back to August of
20 2015 for a moment. Did you have some conduct in
21 August 2015 that was investigated by ATF?

22 A. Yes.

23 MR. BOND: I'm just going -- for the
24 record, I want to voice my objection to

1 questioning about this past disciplinary conduct
2 just for the record.

3 Q. Okay.

4 A. Say the question again. I'm sorry.

5 Q. Yeah. Did you have any conduct in
6 August of 2015 that was investigated by ATF?

7 A. Yes, I did.

8 Q. Can you tell me about that?

9 A. I had some -- some personal issues that
10 I was struggling with. And, you know, with --
11 with stress, anxiety, and some alcohol usage and
12 dependency. And it -- it affected my -- my
13 personal conduct and, you know, that led to a --
14 you know, a situation where I had to, you know,
15 because of my position, it obviously, you know,
16 had an affect on my position and work at the time,
17 so that's -- that's briefly what happened, yeah.

18 Q. Okay. Can you tell me sort of what
19 your involvement in the investigation was? Did
20 you sit down for interviews, did you have to talk
21 to people, did you have to submit letters?

22 A. Yes, I did. I did sit down for an --
23 in an interview with -- with the agency. Yes, I
24 did.

1 Q. Okay. Did you receive a notice that
2 they were proposing removal from the agency?

3 A. I did.

4 Q. Okay.

5 A. That was an initial proposal, yes.

6 Q. Initially, yes.

7 A. Yeah.

8 Q. I just want you to authenticate this
9 document for me. Okay. Can you just tell me if
10 that is the notice that you received in relation
11 to that August 2015 incident?

12 THE REPORTER: Do you want this?

13 MS. PICKERILL: Yeah, of course.

14 A. Yeah. With some retractions, of
15 course.

16 Q. Okay.

17 A. But, yeah, I mean, it's a copy of it.

18 Q. Okay.

19 A. It appears to be legitimate, yes.

20 Q. Okay. What did -- when you got that
21 letter, what did that letter let you know?

22 A. Well, they were proposing -- you know,
23 it was proposed that -- that I'd be removed from
24 my position. Again, I had a personal issue that

1 led to, you know, conduct that I wasn't proud of.
2 And I had a dependency at the time that I was
3 dealing with, due to the amount of exhaustion,
4 anxiety, stress. You know, in my personal life I
5 was covering a lot of things in my professional
6 life that were just, you know, being -- becoming a
7 lot to handle. I made, you know, some bad
8 decisions. I went and resolved the issue with --
9 with ATF, sought -- got treatment, took a break
10 for about a month and -- and came back and, you
11 know, put it behind me and continued to -- to be
12 successful in my career.

13 Q. Uh-huh.

14 A. It's unfortunate that I allowed myself,
15 you know, to get to that position but, you know,
16 it was -- you know, you live and learn. And I
17 made a mistake and I owned up to it.

18 MS. PICKERILL: Uh-huh. As a clerical
19 matter, I'm going to ask my co-counsel if you
20 already marked the exhibits with numbers? Is it 1
21 through 3?

22 MS. HOBBS: Yes.

23 MS. PICKERILL: Okay. Because I on --
24 I have a good faith basis to believe that exhibits

1 1 through 3 will be forthcoming, I'm going to mark
2 this as Exhibit 4.

3 - - - - -

4 Thereupon, Exhibit 4 is marked for
5 purposes of identification.

6 - - - - -

7 BY MS. PICKERILL:

8 Q. Did you ultimately sign an agreement
9 with ATF out of this investigation into conduct?

10 A. Yeah. I received a 30-day suspension
11 and I signed a -- you know, essentially something
12 that's a -- if I can recall, like, you know, don't
13 get in trouble anymore. Like, you're --

14 Q. Uh-huh.

15 A. You know, just don't have any more
16 issues.

17 Q. Okay.

18 A. I can't recall what it was called or
19 what the thing was. But it was, you know, like,
20 don't let it happen again. Like, you know, no
21 more -- no more problems.

22 Q. Yeah. That's no problem. I was
23 actually going to hand you the document.

24 A. Oh, okay.

1 Q. To see if I have what you remember to
2 be that agreement. And I'll purport it's titled
3 Last Chance Agreement.

4 - - - - -

5 Thereupon, Exhibit 5 is marked for
6 purposes of identification.

7 - - - - -

8 A. Okay. Yeah, this -- yeah, this looks
9 to be it without reading it word for word. But,
10 yes.

11 Q. Okay.

12 THE WITNESS: What am I doing?

13 THE REPORTER: Yeah. You can just put
14 that here like that.

15 THE WITNESS: Oh.

16 BY MS. PICKERILL:

17 Q. Did this agreement limit your roles
18 with ATF at all?

19 A. Not that I was aware of, no.

20 Q. Did it change your responsibilities in
21 any way?

22 A. No. It was just based on -- on your
23 conduct. Like don't get in trouble again and, you
24 know, no -- no more issues.

1 Q. It was a two-year agreement?

2 A. Well --

3 Q. Is that right?

4 A. I -- I believe. I didn't read it. But
5 I --

6 Q. Did you read it at the time when you
7 signed it?

8 A. I did.

9 Q. Okay.

10 A. Yeah. I would have read it then. I
11 just didn't read it -- take the time to read it
12 completely.

13 Q. Okay.

14 A. I just looked at it and it appeared
15 familiar to me, and that's why I said --

16 Q. Sure.

17 A. -- I know what it is.

18 Q. You can look at it. But did you sign
19 it on August 5th, 2016?

20 A. Well, yeah. I did.

21 Q. Okay. To -- did you ever get into any
22 issues again --

23 A. I --

24 Q. -- with that agreement?

1 A. No.

2 Q. Okay.

3 A. I've never had any problem at all. And
4 my -- my reviews and performance reviews even then
5 were acceptable, but it only excelled. I mean,
6 I've had a very, very good career at ATF with the
7 exception of the one incident that I, you know,
8 allowed myself to get into. And got back, you
9 know, on -- on a good -- in a good place. But,
10 you know, my -- my reputation and -- and
11 performance is well documented.

12 Q. Would you mind just handing me back
13 that document? I don't believe that I marked the
14 number on the sticker.

15 A. It's got a "5" or something on it.

16 Q. Oh, it does have a 5. I did mark it.
17 I apologize for my unnecessary anxiety about that.

18 Moving on to your other parts of your
19 time with ATF. Were you reassigned to a different
20 position in 2017, do you remember?

21 A. I was asked to take on the
22 responsibilities of the NICs investigations
23 because of the volume and the nature of the work.
24 And, you know, as it was explained to me, my work

1 ethic and attention to detail was not always
2 something that was exhibited by other agents. And
3 they felt because of the pressure received from
4 headquarters to resolve these cases and -- and
5 make the -- you know, the accurate determinations
6 on them, you know, would I be willing to -- to
7 assume this role and to also take on
8 responsibilities for other offices in order to --
9 to help.

10 Because we're -- you know, Ohio being a
11 source -- considered a source state for firearms,
12 there's a high volume of purchases. And these --
13 these come in waves and waves and waves, and it's
14 a delicate issue because in many instances
15 firearms are transferred and a lot of those people
16 are prohibited, some aren't, and now you have a
17 situation that ATF's left to clean up based on the
18 decision made by FBI on the front end. So it's --
19 it's -- it can turn real bad for ATF real fast if,
20 you know, the matters aren't dealt with in a
21 timely fashion.

22 Q. Uh-huh.

23 I have some more questions, and I want
24 to talk to you some more about your work doing

1 those retrievals. Before -- and I'll be honest.
2 I have a difficult time interpreting some of these
3 sort of HR documents. Is this just the notice
4 that you were reassigned to do those NICs
5 retrievals? I could be wrong, I'll put that out
6 there.

7 - - - - -

8 Thereupon, Exhibit 6 is marked for
9 purposes of identification.

10 - - - - -

11 A. I personally have not seen this.

12 Q. Okay.

13 A. That I'm aware of. But, yeah, I mean,
14 you get these personnel actions, these -- SF --
15 I'm not sure what this one is. SF50s. But, yeah,
16 I mean, any time there's a change of location, a
17 change of position, a change of assignment, it
18 doesn't change the fact that you're still not a
19 special agent with a badge with a gun doing
20 investigative work, it just means the nature of
21 what you're doing may have changed.

22 Q. Absolutely. And that's sort of just
23 what I was trying to understand with the timeline
24 of when you started doing the NICs retrievals and

1 sort of just what these meant.

2 A. It's just -- you know, I also had one
3 of those when I moved from an agent to being a
4 DTA. Even though I could go out and do the same
5 work I was doing before, my focus was on something
6 different so they generate an SF50 and it kind of
7 just lets them know, hey, his responsibilities are
8 different. If I would have promoted to a
9 supervisor --

10 Q. Uh-huh.

11 A. -- I would have got the same thing that
12 says he's been reassigned to, you know, a
13 different type of focus.

14 Q. Could you just confirm for me that this
15 is what you said, an SF50 regarding you and that
16 the date is 8-20-17?

17 A. It's dated 8-29-17.

18 Q. Okay.

19 A. And it has my name, initials and every
20 -- my identifiers on it.

21 Q. Okay. And I'll agree that we're not
22 entirely sure.

23 A. Okay.

24 Q. But --

1 A. Now --

2 Q. Since we talked about it, I just wanted
3 to put on the record what we do know about it.

4 A. Am I allowed to ask a question?

5 Q. Sure.

6 A. I just noticed that certain things are
7 redacted on other forms, but I notice my, you
8 know, date of birth, yea, no big deal. But my
9 Social Security on these documents not redacted,
10 so is that pause for concern?

11 Q. So I will let you know we received
12 these from ATF directly and they did the
13 redacting. I am so happy to redact out your
14 Social Security number before we file this.

15 A. I would be comfortable with that.

16 MR. BOND: Don't worry. Your --
17 they're not -- no one is allowed to put your
18 social in the record.

19 THE WITNESS: Okay.

20 MR. BOND: We'll make sure of it.

21 A. It was just an observation.

22 Q. Absolutely, yeah.

23 MR. BOND: Okay.

24 Q. Right now, this is just kind of with

1 us.

2 A. Okay.

3 Q. And before we file it, we'll make
4 sure --

5 A. Thank you.

6 Q. -- that any of those personal
7 identifiers are redacted.

8 A. No, I believe you.

9 Q. No, I appreciate you pointing it out.

10 MS. PICKERILL: Did I give you one?

11 MR. BOND: I've got one.

12 BY MS. PICKERILL:

13 Q. Okay. So I want to move now to 2020
14 and sort of what was going on with ATF.

15 A. Uh-huh.

16 Q. On July 7th, 2020, what was your role
17 with ATF?

18 A. I was currently investigating the --
19 all NICs retrievals and -- and NICs investigation
20 related matters for the -- the Southern District
21 of Ohio and Indiana, which encompasses every
22 single county in those two districts which is
23 numerous.

24 Q. Okay.

1 A. So I was essentially doing it for five
2 different field offices.

3 Q. Okay. So I've seen sort of throughout
4 the documents, sometimes I'll see NICs retrievals,
5 sometimes I'll see NICs investigation.

6 A. Uh-huh.

7 Q. Is there a difference between those
8 two?

9 A. Amongst the agents, NICs retrievals,
10 NICs -- I've got a NICs, I've got -- you know,
11 I've got to run out and I've got to do a NICs,
12 NICs retrieval. I mean, the -- the retrieval is
13 obviously going to pertain to that it was a
14 delayed denial, that the gun had then been
15 transferred to a purchaser and they had been
16 denied after the fact, meaning the three-day wait
17 period had exceeded. By -- by law, the -- the gun
18 dealers or policy, the -- the gun dealers can
19 release a firearm even though a background check
20 has not been finished by FBI. That is --

21 Q. Really?

22 A. Absolutely.

23 Q. Huh.

24 A. So FBI -- and just to -- FBI -- the gun

1 dealer calls in -- you know, you go to buy a gun,
2 fill out the 4473, it's all your information, you
3 answer a series of questions. And then the gun
4 dealer contacts the FBI background NICs center,
5 provides that information, identifiers, they run a
6 background check. There's one of three things
7 that can happen. One, they see enough on there to
8 say absolutely not, he's prohibited, he's denied.
9 Gun dealer says, sorry, you've been denied.
10 That's all you can tell him. Can't tell him why
11 or anything like that. And then it's up to the
12 person to figure it out or file an appeal or
13 whatever.

14 Second thing that could happen is looks
15 good to go, you're given an immediate proceed, pay
16 your money, get your gun, go out the door.

17 Third thing that happens is you're put
18 on what's called a delay, meaning FBI hasn't quite
19 decided whether you can or whether you're given a
20 proceed or denial, they have to look into it
21 further. Well, they only got -- they get three
22 days to do that. And if they cannot come back
23 with an answer to a gun dealer, the gun dealers
24 can say, hey, we haven't heard from FBI, come get

1 your gun. The gun goes out the door. FBI on the
2 forth day, fifth, sometimes I've seen it over a
3 month later they finally come back and there's
4 been incidences where the gun dealer has never
5 heard back from FBI.

6 Q. Uh-huh.

7 A. So they've only got to wait three days.
8 They're in it to make money. They sell it, hey,
9 come get your gun. Now the gun is out there and
10 in a large percentage of the -- of the cases, the
11 person is prohibited.

12 Q. Uh-huh.

13 A. Well, as soon as that gun -- as soon as
14 that whole thing takes place, it's not FBI's --
15 this is ATF's problem now. And it's a priority
16 for them, even though it's not, you know, the
17 glory stuff.

18 Q. Sure.

19 A. It's -- it's an important thing because
20 it can look really bad if the gun is used in a
21 crime.

22 Q. Sure.

23 A. If it, you know, ends up in a bad way,
24 which is always the concern. So now -- now --

1 those are the three things that can happen.

2 So a NICs retrieval, back to your
3 question, would be the gun -- you're referencing
4 the fact that a gun has made it out the door
5 before the background check. Now the possessor,
6 purchaser has it, not always possessing it any
7 more but sometimes, yes. And then now you have to
8 go work the investigation, locate -- try to locate
9 the gun, make contact with the purchaser and
10 ultimately try to recover the firearm in some
11 fashion, and we have a multitude of options to do
12 that.

13 Q. Okay. Thank you. That really helps
14 explain the entire buying process for me.

15 So you're only dealing with instances
16 of that third category you described where someone
17 gets the delayed denial?

18 A. No. I was dealing with all of those.

19 Q. Okay.

20 A. So if somebody gets a standard denial,
21 really what happens means they went -- they went
22 to try, then we generate a warning letter to them.
23 So there's a process there. There's an
24 administrative process there that, you know, I'll

1 -- I'll do up a warning letter. And it's -- it's
2 kind of a boilerplate, but it's a three-page
3 letter that says this -- it doesn't tell them why
4 they were prohibited, it just says it's a -- you
5 know, nobody likes to get a -- anything in the
6 mail from.

7 Q. Yeah.

8 A. So it's -- it's kind of a stern
9 warning. It's on them to kind of figure it out.
10 But it's a reminder, hey, you've been found to be
11 prohibited. Cease and desist from trying to
12 purchase firearms. So there's an administrative
13 process for those that I also took care of. But
14 the priority part of it was the retrieval part, so
15 that was the other part was the delayed denials.
16 So I have standard denials and you have delayed
17 denials where the gun made it out the door.

18 Q. Okay.

19 A. I took care of all of that.

20 Q. So on standard denials, are you going
21 out to retrieve a firearm?

22 A. No. It was never transferred.

23 Q. Gotcha. Thank you.

24 So you were responsible in the summer

1 of 2020 for all of those --

2 A. Everything --

3 Q. -- NICS cases?

4 A. NICS. Everything NICs related.

5 Q. Was there --

6 A. The division came to me for everything.

7 Q. Was there anyone else doing NICs
8 retrievals throughout the area or was it just you?

9 A. I was doing -- I can't speak for other
10 divisions, how they chose -- this is a -- you
11 know, this was what we did in our division, you
12 know, this was under the, you know, direction of
13 our SAC and -- and ASAC and what would be best use
14 of resources in order to tackle this problem.
15 Because we were inundated with it, and it -- I
16 hate to say it, but you can't just give that
17 responsibility to anybody because a lot of times
18 they just sit and they don't get done. It's --
19 people -- it's -- it's -- it's tedious work and it
20 requires a lot of travel throughout the day.

21 Q. Uh-huh.

22 A. And a lot of agents just don't want to
23 do that. They want to stay close to the office.
24 They've got to, you know, pick their kids up and

1 4:00, and, you know, things like that. And it's
2 -- it's just not something everybody wants to do
3 because of the nature of the work.

4 Q. Uh-huh.

5 A. But, you know, I saw a purpose in it
6 and I was more than -- you know, I thought it was
7 a good idea the way they were structuring it
8 because it -- it allows a -- one person to create
9 a -- a -- and have a detailed manner and
10 methodical way to approach these cases in a timely
11 fashion without distractions. And then it allowed
12 for other agents to work on other dedicated
13 projects as well.

14 Q. Uh-huh.

15 A. So it really did work good as a model
16 and as -- it did for our division. It worked
17 really well. And we -- rarely did we get a call
18 from headquarters about, hey, what's -- you know,
19 what's going on? Why is there still so many of
20 these unresolved? We just didn't get that.

21 Q. Uh-huh.

22 A. For the time that I was doing those
23 cases, which was almost four years. I've always
24 done them, but focused for the last four years of

1 my career.

2 Q. Uh-huh. So how often were you having
3 to travel around for that -- for that role?

4 A. Every day.

5 Q. Every day.

6 Were you traveling to multiple places a
7 day?

8 A. Sometimes. Depending on how much time
9 was needed to resolve each one.

10 Q. Uh-huh.

11 A. I mean, I tried to accomplish as much
12 as I could in a 10-hour day. But sometimes you
13 get somewhere and then, you know, it's -- maybe
14 the person is not home or maybe you have --
15 they're at work or here -- here's where they're at
16 or here's where they live, they gave a bad address
17 on the form, they didn't really live there but it
18 was on their license. But they -- but there's
19 steps. I mean, you just don't know where your day
20 is going to go because you can't account for where
21 that person is at at any given time.

22 Q. Uh-huh.

23 A. But the urgency and the -- I should say
24 the priority of trying to get the firearm is just

1 another day ticking. And it's -- you know, you
2 just don't want it to be on your watch when a gun
3 pops up in a crime and it -- it wasn't retrieved
4 or attempted to be retrieved within a reasonable
5 time frame, what's set forth by ATF.

6 Q. So if you're -- you, you're traveling
7 all over to try and find these people, like, if
8 they're not at home when you get there, you don't
9 necessarily want to drive all the way back. Do
10 you just have to get lunch and hang out and --

11 A. It -- it -- it really kind of depends.
12 Like I said, most of the time, you know, I can
13 determine whether the -- you know, through a
14 dialogue with the -- with the resident or whoever
15 the person is that, you know, answers the door.
16 Again they may not live there. Well, then I'm
17 going back through some documents trying to find,
18 okay, where are some secondary possible places.
19 We have databases that allow us to see where maybe
20 they're --

21 Q. Uh-huh.

22 A. -- coming up on a report of something
23 with -- well, there's another possible address.
24 They may live -- so you go there. So -- or it's,

1 hey, my -- you know, my boyfriend will be back,
2 you know, that's him, he'll be back, you know, at
3 5:00. Well, you know, am I going to drive three
4 hours back to Cincinnati? No, I'm going to go try
5 to get some administrative -- I've got my lap --
6 I've got all my stuff with me, and I'll kill time
7 and do some other work and work some other stuff.
8 Or I may -- if it's in Dayton and I've got to go
9 to Beavercreek on another one, I'll go over and
10 work on that one and see if I can get that done
11 and then come back to the other one. So I try to
12 accomplish as much as I can in one day. And it's
13 really not about a convenience to me, it's more
14 about the fact that the time frame on these cases,
15 the clock is always ticking and they really don't
16 want these exceeding a -- you know, a 30-day
17 window, you know, the sooner the better. But
18 you're going to start getting nasty-grams when --
19 when things aren't getting resolved. And so I --
20 and I try to always keep the heat off the division
21 and get these resolved and -- and it -- and we did
22 really good at it, really, really good at it.

23 Q. You mentioned that you were working
24 10-hour days. How many days a week were you

1 working?

2 A. Five days.

3 Q. Five days?

4 A. I mean, 10 is your expectation. But it
5 -- I mean, I've worked plenty of longer days.

6 It's just --

7 Q. Yeah.

8 A. -- you're required to put in a 10-hour
9 day.

10 Q. Okay.

11 A. That's what you're paid for.

12 Q. And --

13 A. Out in the field. I mean, there's
14 9-to-5 positions and stuff. But this is a
15 investigative position and you're paid according
16 -- accordingly for that. So that you're putting
17 in at least 10 hours.

18 Q. Yeah. For the job that you were doing,
19 that was the expectation?

20 A. As a field agent, yes. As a field
21 agent.

22 Q. Gotcha.

23 A. Any field agent.

24 Q. In the summer of 2020, were you under

1 any sort of suspension or limitation on your work
2 responsibilities?

3 A. No.

4 Q. Okay. Did you ever -- you said you
5 were really -- I'll go back. Did you ever work
6 with a partner in that role?

7 A. I didn't have an assigned partner. If
8 I needed additional resources for any reason, I
9 was free to ask. I mean, it's subject to
10 availability. But the -- the per -- the direction
11 and -- and authorization that was given to me was
12 to pursue these cases, and as I needed resources,
13 ask for them.

14 I mean, I was a seasoned officer, very
15 successful and did a lot of things in the agency.
16 And my, you know, discretion was -- was highly
17 regarded, and I did ask when I needed it. There
18 was times where -- and if it wasn't from within
19 our own agency, then I would -- I would seek
20 assistance elsewhere from another law enforcement
21 agency.

22 Q. So --

23 A. As I -- as it was needed.

24 Q. So were there -- so there were some

1 runs where -- or some assignments where you would
2 take someone else with you if it -- if it was
3 necessary?

4 A. If the -- if the subject's criminal
5 history warranted a concern that it may -- the
6 presence of more would be better, usually another
7 agent, just a second person. You know, if they
8 had a propensity for violence, disorderly conduct,
9 et cetera, or if perhaps the -- the location you
10 were going to was in a risky area, then, you know,
11 you've got to have somebody to watch your back.
12 It would be more -- more of a chance that
13 something could -- you know, could happen in a
14 high crime area versus a -- you know, just a
15 suburban neighborhood.

16 Q. Sure.

17 A. So -- but the idea was resource
18 management, you know, take what you need.

19 Q. Uh-huh. So were you able to get help
20 sort of from the various ATF branches throughout
21 your division?

22 A. Normally it could come from where I'm
23 located, out of Cincinnati. I would ask somebody
24 out of Cincinnati just because I can account for

1 their availability a little bit better.

2 Q. Okay.

3 A. And you have tighter relationships with
4 them. You know, guys are -- you know, you're less
5 likely to get an excuse, well, you know, I've got
6 -- it's just human nature. You know, it's just
7 how -- so I would -- if I needed it, I would first
8 and foremost get an agent from Cincinnati. Have I
9 got agents from other area at times, yeah,
10 probably, but I've done hundreds of these a year.
11 I mean, hundreds of firearms I retrieve per year.
12 And it's -- so, I mean, it's -- you know, it's a
13 lot, but you know, if I needed it, I -- I would
14 get somebody if I needed it.

15 Q. Okay.

16 A. If I, you know, felt -- and coming from
17 my background, I can assess a risky situation
18 pretty well.

19 Q. I am going to talk next a little bit
20 about sort of the end of your time with ATF.

21 A. Sure.

22 Q. And because I -- I know what ATF has
23 said about this, but I really want to know sort of
24 what your thoughts are.

1 A. Yeah.

2 Q. And what your understanding of the
3 situation was.

4 A. Absolutely.

5 Q. So I'm going to hand you a letter, this
6 was the notice of final decision from
7 November 22nd, 2021.

8 A. Uh-huh.

9 Q. Actually, let me put a sticker on it
10 first.

11 - - - - -

12 Thereupon, Exhibit 7 is marked for
13 purposes of identification.

14 - - - - -

15 MS. PICKERILL: There you go.

16 BY MS. PICKERILL:

17 Q. Yeah. Can you just describe for us
18 what that is?

19 A. That's a --

20 MR. BOND: Wait a second. Alex, just
21 for the record, I want to object to questioning
22 about the -- the 2021 finding of conduct
23 unbecoming, as it's been since removed from the
24 file. Just for the record I wanted to say that.

1 MS. PICKERILL: Thank you.

2 MR. BOND: Are we marking this? Did we
3 mark this?

4 MS. PICKERILL: It's Exhibit 7.

5 MR. BOND: All right. Thanks.

6 BY MS. PICKERILL:

7 Q. Mr. Burk, can you just briefly describe
8 for us what this letter is?

9 A. Yeah. It's a -- it's a notification
10 from a -- from the bureau deciding official at the
11 time. It's a rotating position, so it -- it
12 changes.

13 Q. Is that someone with the professional
14 review board or --

15 A. No. That is a figurehead in the
16 agency, and again it's a rotating position.
17 Usually a SAC, sometimes an ASAC that will take on
18 the position as the bureau deciding officials. So
19 it changes. It's -- it's just a position to take
20 on a different responsibility for the time. And
21 all they do is make the final decision. And it's
22 usually based off of -- of, you know, they take
23 into account what the PRB, which is a board of
24 other agents or supervisors throughout the

1 country, you know, convene to review something and
2 -- and make a decision. And then they submit that
3 to the bureau deciding official for him to make
4 his decision, which is the only decision. Like, I
5 mean, it's -- it's not -- the PRB just makes
6 recommendations, they don't make decisions. The
7 bureau deciding official makes decisions.

8 Q. Okay. And then if someone or I suppose
9 when you appealed his decision, who do you appeal
10 it to?

11 A. That would be -- I'd appeal that -- I'm
12 trying to think how that process is. I'd appeal
13 it to -- I'd appeal that to -- yeah, I believe --
14 I think it's appealed to -- well, the agency is
15 involved. And I know -- I'm not 100 percent sure
16 exactly how that's channelled. But I believe it
17 -- it does go back through, I mean, ATF is
18 involved. I'm just not 100 percent sure on
19 exactly whether it goes to ATF -- probably ATF and
20 maybe OPM at the same time. I'm not 100 percent
21 sure that.

22 Q. Uh-huh.

23 A. I mean, in this case I don't know what
24 the nuances of which channels it travels through.

1 I just know you have the -- the option.

2 Q. Okay. You had mentioned the
3 recommendation of PRB as well. Did you get a
4 letter with one of those in this instance?

5 A. No. You just get -- you only get --
6 that I can recall, I think you're -- any
7 notifications and stuff are just coming from the
8 -- the bureau deciding official.

9 Q. Okay.

10 A. I mean, it doesn't matter what the
11 nature of anything is, if there's anything, you
12 know, from minimal to maximal, whatever it is,
13 it's -- you're going to get -- the bureau deciding
14 official is your conduit.

15 Q. Okay.

16 A. Based on anything that is -- goes
17 before the PRB, which could be anything. It's --

18 Q. Okay.

19 A. So --

20 Q. I'm going to show you what I've marked
21 as Exhibit 8. And this is a letter from the
22 professional review board dated July 16th, 2021?

23 A. Oh, okay.

24 - - - - -

1 Thereupon, Exhibit 8 is marked for
2 purposes of identification.

3 - - - - -

4 Q. Have you seen that before?

5 A. Yeah. Maybe I have. It's -- like I
6 said, it's been awhile.

7 Q. That's okay.

8 A. Okay. So, you know, I stand -- I guess
9 I stand corrected, if in -- if in fact the review
10 board -- okay. Then I guess they do notify you.
11 I thought it all came through the BDO, but it's
12 been a long time. I mean, since this anyways,
13 it's been a couple years. So I've -- I can't
14 recall every document. But, yeah, I would say
15 that's correct then, that you get notification
16 from the PRB and then -- then I believe maybe you
17 appeal to the BDO, I -- maybe that's the process.
18 I just can't remember exactly right now.

19 Q. Okay. That's totally okay. I just
20 wanted to make sure --

21 A. Yeah.

22 Q. -- that I had the correct documents and
23 I wasn't missing anything or --

24 A. No, that is. I just couldn't recall

1 the order in which you got them and who you got
2 them from --

3 Q. No worries.

4 A. -- from myself.

5 Q. In Exhibit 7, which is the later
6 letter.

7 A. BDO, right.

8 Q. Uh-huh. The deciding official
9 sustained three specifications; is that right?

10 A. One -- I see three specifications noted
11 here, yes.

12 Q. Okay. Do you remember what the
13 specifics were? It's okay if you don't.

14 Do you remember that all three
15 specifications were for conduct unbecoming?

16 A. That was the general -- the general
17 charge of conduct unbecoming, that's a -- kind of
18 a catch all in the agency. From A to Z, it's --
19 it's a catch all. I mean, you can make anything
20 apply to it. So in this case, that was -- that
21 was the only charge that they were using against
22 me.

23 Q. The first specification was for the use
24 of profanity and for failing to wear a badge or

1 something to identify yourself as law enforcement.

2 Is that a correct understanding?

3 A. That's my understanding of what's
4 written here. But they're -- they're
5 contradicting their own policy in their own order
6 because you're not required -- in the instance of
7 where I was at and what I was doing in that type
8 of administrative investigative, you're not
9 required to wear anything visible. So -- but
10 again, I mean, I've got to deal with what they --
11 you know, what they put before me. It's -- you're
12 kind of in a position where you're -- you know,
13 you know, that's -- you just kind of got to deal
14 with it. But it's -- it's entirely incorrect, so,
15 you know, the -- there was -- obviously, you
16 watched the video. There was profanity used. And
17 there's a reason, you know, under those
18 circumstances. But as far as the identification
19 part, no, and I -- and I do believe there's
20 documentation that's accurate that supports the
21 fact that in that capacity, you're -- you're not
22 required to.

23 Q. Do you have any of that documentation?

24 A. I believe I thought there was something

1 that -- I thought -- well, I know that to be the
2 case. But I thought there was -- I could have
3 swore there was some kind of documentation that
4 said you don't need to wear that.

5 Q. Okay. And --

6 A. I mean, I believe there is. Do you not
7 have something with that in it?

8 Q. I do not.

9 MR. BOND: He's talking about the
10 written response from ATF.

11 MS. PICKERILL: Oh.

12 A. I mean --

13 MR. BOND: The interrogatory written
14 responses, that's what I think is what he's
15 talking about.

16 MS. PICKERILL: Okay.

17 A. Yeah, I guess. I just know that there
18 was -- it -- first of all, it's not in the policy,
19 it's not in -- that you have to do that in -- in
20 the manner of which I was conducting these
21 retrievals, and it's an administrative
22 investigation, it's not an enforcement operation
23 so to say, I wasn't required to. I mean -- and it
24 wasn't me making that decision, it was my

1 management. It's -- it's the way that -- they're
2 the ones putting forth the enforcement of the
3 orders and -- and the way things are going to be
4 in the division. So I was following -- following
5 ATF policy and protocol in this manner. And
6 wearing markings and all this is not required,
7 you're required to have your credentials and
8 you're required to have your firearm and you're
9 required to be, you know, professional and
10 courteous to the people you're -- you're -- you
11 know, the citizens you're trying to make contact
12 with. But I've never in -- in every NICs case
13 that I've ever worked, I never -- and focused on
14 those four years, I never wore badges hanging and
15 the garments. And there's -- there's a reason for
16 that. So, one, it's not required. And, two, it's
17 -- it's not really tactically sound and it doesn't
18 usually initiate a warm, fuzzy feeling with a
19 citizen when you get somebody of authority showing
20 up with all kind of stuff at your door. You're
21 really trying just to create a dialogue and
22 resolve the situation.

23 Q. Okay.

24 A. So I -- so I believe that specification

1 has some inaccuracy in it. But, you know, at the
2 time, I -- I just have to deal with what -- with
3 what their decisions are. Because this is not a
4 division level, this is coming out of
5 headquarters.

6 And my understanding and what I was
7 informed is this event obviously happened on
8 7-7-20. I was told don't worry about it. You
9 didn't do anything wrong. You didn't violate any
10 policies. This is all coming from my SAC, my
11 ASACs, nothing happened with this. It was
12 essentially a forgotten matter until a lawsuit
13 splashed across the headlines. It was then told
14 to me ATF headquarters, which is a separate
15 element, wasn't happy about that. And now there's
16 a problem because we have a working relationship
17 with the Columbus Police Department, we always
18 have. We have their agents or their officers as
19 part of our task force and this is not good for
20 the agency that this agent is -- is now involved
21 in this.

22 And my understanding was through
23 informal channels, but it's a small agency, like,
24 the -- the acting director at the time made it a

1 point to -- to get me out of the agency because of
2 it. It -- I wasn't worth sacrificing any conflict
3 with Columbus is my understanding. Again, it's
4 not in writing, it's just, you know, it's -- it's
5 the channels, it's gossip, it's talk, it's agency
6 talk. And so, you know, I really wasn't in a
7 position to try to fight whatever they were trying
8 to do. I just had to take -- you know, go about
9 it and try to seek a correction to things as to --
10 to really where -- what was accurate and what --
11 what had happened.

12 And -- and so I -- this -- the
13 specification one, it's their rationale there to
14 me was incorrect. I mean, as far as the -- having
15 -- you know, basing it on part -- not wearing
16 credentials and I had credential. I have it
17 exactly the way every agent does when they go out
18 and knock on a door for something of that nature,
19 so --

20 Q. Something of that nature. You had
21 mentioned that this run was investigative and not
22 enforcement based. What does that mean?

23 A. Well, ATF has planned enforcement
24 operations. These are instances where you're

1 going to generate a search warrant, you have
2 preplanning that is required to take place. You
3 are going to use a multitude of resources to
4 accomplish this planned operation, search
5 warrants, arrest warrants, undercover operations,
6 buy busts, et cetera, those things go through a
7 whole different -- those are called planned
8 enforcement operations. There are whole separate
9 requirements for those.

10 Q. Uh-huh.

11 A. The planning is -- has to be
12 preplanned. It has to go through a couple
13 different layers, of which I used to be involved
14 in as the DTA. I would review the operational
15 plans, make sure they were safe, tactically sound,
16 and then I would give my recommendation to the
17 ASAC. And say, hey, I'm good on the tactical
18 side; I think it's sound.

19 He would take my advice and then, you
20 know, go -- go review it as well and then usually
21 go -- I was -- you know, the DTA is deemed the
22 tactical expert, the expert on all things tactical
23 for the division. That's why, you know, you're
24 asked to be that or you're appointed to that

1 position. You're still an agent, still a field
2 agent, but your -- your expertise in that matter
3 is -- is why they want you in that position.

4 So that's a planned operation. NICs
5 retrievals are not planned. You don't make it a
6 -- it's not an enforcement operation where you're
7 going there with the intentions of making an
8 arrest in that capacity. It's to be
9 non-confrontational. It's really to just
10 facilitate the recovery of the firearm. And
11 because it's such, there's options. You have
12 three options. I have discretion in one of those
13 three options in how I want to go about the
14 recovery of the firearm.

15 So in -- it's a very -- it's meant to
16 be very non-confrontational. We just want to get
17 the gun back. We can't fault the person entirely
18 because we're trying to remedy a situation by
19 where they can still get the gun, even though
20 their background check is back, that's not their
21 fault. And in some cases, you know, maybe they
22 didn't know they were prohibited. Maybe they were
23 advised otherwise by an attorney. I don't know.

24 Q. Uh-huh.

1 A. But then there's instances where, you
2 know, I thought that was off my record and, you
3 know, so it -- that's really not the point. The
4 point is either you can have it or you can't. And
5 if you can't, then we've got to fix the situation.

6 Q. You mentioned that you have three
7 options to go --

8 A. Yes.

9 Q. When you go retrieve a firearm. What
10 are those three options?

11 A. I can -- I can -- if the firearm is
12 located or the person is in possession, I can
13 seize it. I just take it. That's my authority to
14 do so by law. They are a prohibited person and
15 they're in possession of a firearm. So I do not
16 need a warrant in order to do that. It's -- it's
17 by authority: Seize it.

18 The second option is I can facilitate
19 the return of the firearm to the FFL where they
20 purchased it. Okay.

21 I -- and the third option is I can
22 facilitate the transfer to a third party called a
23 third party transfer, and of course that person's
24 vetted by myself to ensure they're not a

1 prohibited person.

2 And those two options, the last two,
3 return to the FFL and the third-party transfer are
4 the two essentially preferred options because it's
5 a -- disposal of the firearms by the agency is a
6 very time consuming process. The firearms will
7 pile up in the local vault, in this case
8 Cincinnati. And it will take an -- you know,
9 approximately a year for it to go through the
10 legal notification and all the -- the -- the
11 channels that it needs to go with to get
12 ultimately approved for destruction. And -- and
13 the agency doesn't want to deal with all of those
14 firearms if it's not going to be prosecutable.

15 Now, if in -- if it's indeed a case
16 that warrants a seizure of the firearm, then there
17 may be grounds to further pursue prosecution or a
18 case to be billed if the person is -- you know,
19 their criminal history reflects the fact that,
20 yeah, they knew they weren't supposed to get this
21 gun. Yeah, they have it, and they have a
22 horrendous criminal history. It's appealing to
23 the U.S. attorney's office to pursue that case,
24 and we can only recommend it.

1 So those are the three options. But in
2 most instances, the -- the third-party transfer
3 and the return to the FFL are the preferred
4 options and those are the options with very few
5 exceptions that I facilitated in almost every
6 instance, with the exception of a few that
7 warranted otherwise. And it -- it was nice to
8 have those options because, you know, contrary to
9 what people may think, you know, we're not as bad
10 or ATF is not as bad as everybody make them out to
11 be.

12 So what -- what a good aspect of that
13 is is it -- you know, everybody thinks they're at
14 your doors, they're going to take your guns.
15 Well, no. You know, listen, I've just got to fix
16 this problem. You know you're not supposed to
17 have it. My job is to advise you why, and I'm
18 going to advise you why and show you why. But we
19 have some tools in our toolbox. So if the FFL
20 wants you to give you money back, we don't care.
21 If he wants to give you \$50 of 100 back on it,
22 it's better than nothing. It's better than the
23 first option. Or if there is someone that doesn't
24 live in the same house as you obviously that we

1 can vet that we feel comfortable as a third-party
2 transfer that understands and will sign that
3 you're prohibited and that the return of that
4 firearm is going to get them in trouble as well
5 and they're willing to do that, then we'll
6 facilitate that return. And in the four years
7 that I did that job, extensively intensely like
8 that, hundreds, hundreds of contacts with all
9 walks of life, race, creed, color. It doesn't
10 matter his -- you know, there's not too many times
11 that I didn't leave with a, man, I really
12 appreciate the way you handled this, thank you, I
13 never expected this. And -- and in my -- you
14 know, my -- what I liked about that so much was
15 that you -- I've done all the heavy enforcement
16 stuff and all of that kind of stuff, you know, eh,
17 you know, no body -- you know, it's -- you're not
18 liked when you are there. But, you know, seeing
19 that I was able to leave people with a good taste
20 in their mouth even though they're doing something
21 they really didn't want to do, but, still think,
22 you know what, this was way better than I thought
23 it was. And you know what, you guys aren't that
24 bad; I totally understand. So having those

1 options and those were the options I usually
2 pursued, unless it warranted otherwise made the
3 job very easy in it's finality of when that gun
4 had to be taken or removed from their possession.

5 Q. You had also mentioned that right after
6 this event with CPD happened that both your SAC
7 and ASAC told you that you didn't do anything
8 wrong and didn't violate any policies.

9 A. I was -- I -- when I left the scene or
10 was finally cleared to go, I went to the division
11 office and, you know, went through what had
12 happened. And they obviously saw exactly the way
13 I was dressed. They -- you know, they went
14 through what they knew and, you know, we're --
15 they saw no violations, they assured me, listen,
16 you're a victim in this case, this was -- should
17 have never -- they should have never acted that
18 way, you know, they were really kind of in shock
19 as, you know, as I was. And from what I
20 understand, there was -- that was then and -- and,
21 you know, that was what I was being told at the
22 time. There was, you know, I was told a number of
23 things in terms of -- of, you know, what -- you
24 know, that I was -- in no way, shape or form at

1 fault. I was -- I should not have been confronted
2 in the fashion I was. And apparently the next day
3 there was some follow-up with my SAC at the time
4 with -- with ranking members of the Columbus PD
5 and the matter was discussed and things were said
6 that, you know, we're in agreement with what they
7 told me is my understanding.

8 Q. So back to that November 2021 letter.
9 The second specification more specifically was for
10 refusing multiple lawful commands to get on the
11 ground. Is that your understanding?

12 A. Specification -- that's specification
13 two?

14 Q. Yes.

15 A. Yeah. Yeah. I see it in there,
16 refused his command, yes.

17 Q. Okay. And then the -- the last one
18 which was also conduct unbecoming was more
19 specifically for failing to cooperate with being
20 handcuffed; is that your understanding?

21 A. That's what they're referencing in
22 there. That is my understanding.

23 Q. Okay. Okay. And then they kind of
24 talk about how they're going to determine the

1 sanction and weighing some factors. Do you know
2 about those factors, the --

3 A. The Douglas.

4 Q. -- Douglas?

5 A. They're referenced in there, yes.

6 Q. Okay. On page 3, they say that "much
7 of your misconduct was intentional, repeated, and
8 created an unnecessary risk of harm for yourself
9 and the responding officers." Do you agree with
10 that?

11 A. I disagree with that.

12 Q. Okay. In weighing these factors, they
13 talk about also considering some letters of
14 recommendation that you submitted?

15 A. Yes.

16 Q. Okay. And those were letters sort of
17 on your -- on behalf of you as an agent?

18 A. Those were -- those were the -- yeah,
19 those were letters generated by my senior
20 management -- my management.

21 Q. Okay.

22 A. Division management.

23 Q. The letter also notes that at least in
24 ATF's talking with you that you failed to

1 recognize throughout the process that you bear
2 some responsibility in how these events unfolded?

3 A. What form are you referencing?

4 That's --

5 Q. It's that notice of final decision on
6 page 4.

7 A. Okay. Not the -- not the -- not the
8 letters you were referring to previously?

9 Q. No. I'm so sorry.

10 A. Not --

11 Q. In the letter of the final decision.

12 A. Okay.

13 Q. On page 4. I should have been more
14 clear.

15 A. Now, can I have the question again, now
16 that I know the document you're talking about?

17 Q. Yeah. And if you want to look at -- my
18 question is is that -- is that true, do you feel
19 that you bear any responsibility for how the
20 events unfolded?

21 A. No, I do not. Not -- not for the
22 actual event, no.

23 Q. Okay. For any other part of it?

24 A. I mean, the only responsibility I might

1 bear is that I -- I chose to work on that case
2 that day instead of -- of going to a different
3 case where, you know, I -- that would be the only
4 thing that I would think based off of all the
5 information and my assessment and experience in
6 that situation, I -- I do not feel that way, no.
7 I do not feel that I was responsible for the
8 actions of that officer.

9 Q. And just to be clear, you don't believe
10 that you did anything outside of policy by picking
11 to go do that case that day?

12 A. Absolutely not. Absolutely not.

13 Q. Just making sure.

14 A. No. It's just, you know, I -- I've
15 been in that similar situation with less
16 information provided where the person was unsure
17 of who I was at their door, or I was possibly
18 sitting in a vehicle, you know, which is unmarked,
19 waiting, doing some surveillance, just waiting for
20 the person to get home or seeing if that's a real
21 address. A concerned citizen calls, hey, there's
22 a suspect, someone suspicious, I think they're,
23 you know, maybe wanting to break into a house or
24 -- you know, you just don't know what people call

1 in. And that has happened several, several times
2 because of the nature of what I'm doing. And in
3 every single one of those incidences, albeit an
4 officer may approach with some general caution,
5 there is a who are you? Do you have some
6 credentials? And there's a dialogue. There is
7 some type of dialogue to -- to quell any concern
8 by the officer, eliminate any risk to myself or
9 the officer, and obviously my hands are visible, I
10 -- I have credentials in my pocket. Can I please
11 see them? And it's -- and that doesn't matter
12 whether that was ever a -- a large city, major --
13 major city police department response or a
14 three-man sheriff's department in the sticks of
15 southern Indiana somewhere. It's just -- it's
16 just kind of like there's a procedure for -- for a
17 situation like that. You -- if the person is not
18 an obvious threat, you can see their hands, this
19 is law enforcement 101. Create a dialogue. Find
20 out what -- what are they doing? Do you have some
21 identification? You know, yeah, I'm with ATF. Do
22 you have some questions? Questions that probably
23 only another law enforcement officer know or -- or
24 I have documents, I always have the documents with

1 me. And I'm always dressed the same fashion.
2 Everything is -- I'm very systematic in what I do
3 with that job. And it's -- it's never -- there's
4 never been a course of action like there was that
5 day. So I -- I don't feel at all that I
6 contributed to the actions of the -- of the way --
7 of the way that officer responded.

8 Q. Ultimately, the bureau deciding
9 official made the decision at that time to remove
10 you from ATF?

11 A. Yes, he did.

12 Q. And the letter says it would be
13 effective November 5th, 2021; is that right?

14 A. Correct. Over for a year after this
15 incident occurred, yes. Well over a year.

16 Q. Okay. And we talked about sort of the
17 weighing of those factors to determine what
18 sanction they felt was appropriate. Those are
19 sort of gone through that a little bit more detail
20 in the earlier letter on the proposed removal --

21 A. Could this be --

22 Q. -- Exhibit 8.

23 A. Okay. Would this be -- since there's
24 not a question, can I pause and use the bathroom?

1 Q. Yes. Absolutely. I didn't believe I
2 had a question. I was just letting you know --

3 A. And I didn't want to interrupt you
4 either so I --

5 Q. -- what document I was turning to. I
6 appreciate that very much.

7 A. -- was trying to find a moment.

8 Q. I wouldn't hate a bathroom break
9 either.

10 A. I -- well, yeah.

11 THE VIDEOGRAPHER: We are off the
12 record. The time is 10:11.

13 (A short recess is taken.)

14 THE VIDEOGRAPHER: This is the start of
15 media number two. We are back on the record. The
16 time is 10:24.

17 BY MS. PICKERILL:

18 Q. So we were looking at Exhibit 8, which
19 was the notice of proposed removal -- removal,
20 excuse me, from the PRB. Sort of right at the
21 beginning on page 2 they note that you were
22 working on July 7th, 2020 and performing your
23 duties of an ATF special agent. I just want to
24 confirm with you that that's true?

1 A. Yeah. That's -- I was working as a
2 special agent.

3 Q. Okay. On -- I just want to clarify if
4 you know some of this stuff in here.

5 On page 3, they say that you made
6 multiple attempts to contact -- to make contact
7 with the female resident. How many attempts did
8 you make to get in contact with her?

9 A. When you say "attempts to contact," are
10 you -- what are you referencing?

11 Q. I guess maybe that's the clarification
12 I'm looking for, is do you know or --

13 A. I'm not sure what they're referencing.
14 But there was an initial contact of going to the
15 residence and then knocking on the door and
16 obviously probably knocking a couple more times to
17 gain the attention of the resident so they'd
18 answer the door.

19 Q. Okay. So you hadn't sent any letter to
20 the residents before this?

21 A. No. That would never be the case.

22 Q. Okay. I think you had mentioned
23 earlier that there are some other instances where
24 letters might be sent. And those were in sort of

1 different kinds of cases; is that right?

2 A. Those are -- those are in cases where
3 the firearm has not been transferred, so no person
4 possess it, they're just being notified. Hey, you
5 attempted to try to purchase, your background
6 check was found to be prohibiting, cease -- you
7 know, don't keep trying until you can get that
8 issue resolved.

9 Q. Okay.

10 A. So it's a strong warning letter put out
11 by the agency. But there's no firearm
12 transferred, so that's the difference.

13 Q. Uh-huh. You're not having to go
14 retrieve anything?

15 A. Correct. It's not in the possession of
16 a prohibited person --

17 Q. Gotcha.

18 A. -- or believed to be in the position.

19 Q. Okay. So the only time that you had
20 gone to this residence was on this day?

21 A. It was the very first initial contact
22 to try to determine if the person lived there, you
23 know, it's just initial contact to kind of
24 continue the investigation as to the whereabouts

1 of the firearm or in this case if the person was
2 there or not, so, yes.

3 Q. Uh-huh. Was it part of your job to
4 interact with local law enforcement?

5 A. Yes.

6 Q. Okay. And it -- they kind of -- they
7 say that directly on page 6 of this document is
8 where I was getting that.

9 A. Okay.

10 Q. If that's helpful.

11 A. I'll get there.

12 Q. And I think you had mentioned earlier
13 the deposition by written question that we had
14 sent to ATF and then got some answers to.

15 A. I believe that's what would have been
16 what that document was. I couldn't recall the
17 document, but I thought there was mention of that
18 somewhere.

19 Q. Okay. I think that I found what you
20 were mentioning. And so I'm going to ask you a
21 couple questions, and I've labeled this as
22 Exhibit 9. Can you tell me if that is what you
23 were talking about?

24 - - - - -

1 Thereupon, Exhibit 9 is marked for
2 purposes of identification.

3 - - - - -

4 A. I'd have to look and see, yeah.

5 Q. Okay.

6 A. That looks like it. I believe there
7 was some there somewhere.

8 Q. And --

9 A. I don't recall what page or anything,
10 but I do recall reading something of that nature
11 in here.

12 Q. Yeah. I think question 39 talks about
13 the dress code policy and that your clothing was
14 within that policy on the day in question?

15 A. Policy regarding the -- yeah.

16 Q. And they kind of make that distinction
17 between the administrative --

18 A. That's what I believe I was
19 referencing.

20 Q. Okay.

21 A. That I was dressed appropriately and
22 professional and had what I needed to do and --
23 and what was per policy for what I was doing.

24 Q. Okay.

1 A. In terms of the -- yes.

2 Q. Okay. I want to make sure I got that.
3 And actually if you wouldn't mind holding on to
4 that.

5 A. Sure.

6 Q. If you could go to page 13. I'm going
7 to look at question number 42. They say that you
8 -- in terms of working and coordinating with local
9 law enforcement as part of your job, that you
10 would have been trained or advised to call them
11 ahead of time. Do you remember what training or
12 advisory notice you would have gotten about that?

13 A. And again the question is -- is very
14 general. It's -- it's based on the need for
15 resource. We're -- we're law enforcement agents,
16 federal agents. If we feel we need the
17 assistance, by all means use it. And sometimes
18 local law enforcement may need or have information
19 that may be of value to the investigation. It --
20 it's certainly not a requirement. We're not
21 trained that you have to.

22 Q. Uh-huh.

23 A. In many instances, you -- you don't
24 call the local law enforcement. And outside the

1 scope of this would be the fact that what you
2 don't want to do is create a large presence at a
3 scene and -- and unintentionally escalate the
4 person's stress or -- or draw attention to what
5 you're doing there. So it's -- it's situation
6 specific. But, yes, you -- there is -- you know,
7 you are trained in a sense that you have that at
8 your disposal. You don't have to. If you need
9 the extra resources, by all means we're all on the
10 same team, use -- use as you need.

11 Q. Uh-huh.

12 A. And it's reciprocal.

13 Q. In the next -- in question 43 ATF says
14 that it's a common and recommended practice.

15 Would you agree with that sort of -- colorization?

16 A. How to responding if -- if -- yes. And
17 you're trained to establish a dialogue, identify
18 yourself and present your credentials to validate
19 who you are. And as I said before, I've never not
20 followed that -- or attempted to follow that
21 protocol and it not be successful until July 7th,
22 2020.

23 Q. Uh-huh. If we look again at Exhibit 8.

24 Sorry. I -- I know I'm going to be jumping

1 around.

2 A. Hang on. That's 9.

3 Q. The July 16th, 2021 letter.

4 A. Okay.

5 Q. On page 6, they say that your work was
6 limited to matters such as NICs cases throughout
7 Ohio and Indiana. Why was your work limited to
8 those matters?

9 A. Because that is the judicial districts
10 of the Columbus field division. That's our area
11 of responsibility for the division for -- for that
12 district. It was -- I mean, we have the northern
13 district of Ohio as well, but for reasonable
14 purposes of not having to draw per diem, lodging,
15 the expectation of going to -- up to Cleveland to
16 work on cases is -- it's -- you know, they had to
17 draw the line somewhere of what -- and I had to
18 agree to what I was willing to do and, you know,
19 it's a purse strings thing. It's, like -- but
20 that's why I covered -- I agreed I'll take all of
21 this area. I'll cover it. Don't worry about it,
22 I got it covered. But that's -- I believe that's
23 what the reference is, that was my area of
24 responsibility, which is extensive as it is.

1 Q. Okay. Thank you.

2 Down on the same page in factor No. 4,
3 it says the "(RAC explains that the standard
4 practice within the office is for you to work in
5 NICs cases by yourself based on your prior
6 disciplinary record involving Kroger)." What does
7 that discipline with Kroger have to do with your
8 working the NICs cases?

9 A. My understanding when -- when I was
10 again -- I wasn't ordered to do those NICs cases.
11 I was asked, you know, would you be willing. I
12 think there was an understanding, too, that a lot
13 of the personal problems that I was going through
14 were stress, anxiety, work demands. I was, you
15 know, going and -- you know, I was wearing a lot
16 of different hats, and essentially taking myself
17 two times to a point of exhaustion of trying to
18 accomplish so much and wear so much that, you
19 know, upon discussion I was at that point in time
20 having kind of recalibrated and refocused and
21 addressing my personal problem with -- with things
22 and is -- that I -- I was in agreement to do that
23 because it allowed me to -- it really took a lot
24 of stress out of my personal life and it -- and it

1 just had a little bit more structure and a little
2 bit more opportunity to have a little bit more of
3 a normal life versus a more taxing and, you know,
4 it was a good fit and it was a need and it -- and
5 I agreed to do it --

6 Q. Uh-huh.

7 A. -- because it benefitted the division,
8 benefitted the offices, benefitted everyone
9 involved. And again it's -- we're a small agency.
10 You know, at times you only have a few office --
11 agents in an office and -- but the
12 responsibilities don't lessen based on the amount
13 of people in the office. So, you know, I'm a team
14 player. It's, like, you know, whatever is best
15 for the agency and the division and it keeps us in
16 good standing, you know, I'm willing to do. And I
17 saw a way to take this program, form it into
18 something that's very effective and -- and I was
19 able to accomplish the results by myself of what
20 agents from five offices couldn't accomplish
21 because I was able to focus solely on that and it
22 worked for me and it worked even better for the
23 agency, so that's how that came to be.

24 Q. Okay. Moving more generally to -- to

1 the -- to the interaction with ATF through this
2 process.

3 A. Oh.

4 Q. Did you ultimately appeal that final
5 decision?

6 A. Oh, well, I absolutely would have
7 appealed it.

8 Q. Yeah.

9 A. I don't have the -- I don't know if I
10 have a document in front of me. But, yeah,
11 absolutely. I was in total disagreement as was --
12 as was my division management. I mean, it was --
13 it was a -- you know, it was a blind-side to say
14 the least. But again the explanation as to how
15 that came to be and -- and why it probably
16 happened, you know, unfortunately, you know,
17 that's how sometimes things work and, you know,
18 headquarters, politics, all that kind of stuff,
19 so, yes.

20 Q. So I've just handed you Exhibit 10,
21 which I believe is a document related to that
22 appeal?

23 - - - - -

24 Thereupon, Exhibit 10 is marked for

1 purposes of identification.

2 - - - - -

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. It's the Settlement Agreement for
6 the -- yeah, for the appeal. It's a correct --
7 it's a correct rationale for my separation from
8 the agency is what it is -that ATF has agreed to.
9 That -- to make the correction of record.

10 Q. So they agreed to like you said correct
11 your record?

12 A. Correct.

13 Q. And specifically to change the notice
14 of removal to change the reason on it?

15 A. Absolutely.

16 Q. Okay.

17 A. To a medical inability to perform,
18 which was the -- as a result of the injuries,
19 permanent injuries that I've sustained because of
20 the incident.

21 Q. Okay. That was going to be my next
22 question.

23 This agreement -- this agreement does
24 not say that they were wrong in their findings in

1 those previous letters, does it?

2 A. I wouldn't expect that it would.

3 Q. Okay.

4 A. I mean, it's -- you know, it's -- you
5 know, they're going to do the right thing, but at
6 the same time nobody wants to look like they were
7 wrong. I mean -- I mean, I get it, and my -- my
8 rationale behind it is, you know, not only the way
9 I felt about the situation, but felt of my
10 management who would know me best who know the
11 situation here in the Columbus field division and
12 how that and, you know, others. You know, if I
13 had felt I had done anything wrong, I would -- I
14 would own the results of things. And in this case
15 it was -- it was very obvious to me that I had to
16 try to get the record corrected and -- because
17 this should have never happened. And that's not
18 just my opinion, that's the opinion of my
19 management, except ATF headquarters has their own
20 agenda and it's a different animal. And
21 unfortunately, you know, it supersedes everybody
22 else when they make a decision on something,
23 regardless of whether it's right or wrong, it's
24 just the way it is, so.

1 Q. When you say that that is the opinion
2 of your management, are you referring once again
3 to the statements that your RAC made to you after
4 this or was there any written --

5 A. It --

6 Q. -- communication about it?

7 A. They obviously submitted their opinions
8 and responses to the actions of the PRB to be
9 submitted to the BDO. I think it strongly, you
10 know, lends to what I'm saying in terms of their
11 opinions of the matter. And not only what I was
12 told but what they stepped up to the plate and
13 said this is wrong the way he was --

14 Q. Uh-huh.

15 A. So they submitted the --

16 Q. Do you mean the letters of
17 recommendation?

18 A. Absolutely. And I believe --

19 Q. Okay.

20 A. -- those were what was submitted to the
21 BDO in my appeal to the BDO --

22 Q. Yes.

23 A. -- or my response to the BDO, yes.

24 Q. I believe that's correct as well.

1 A. And --

2 Q. I just wasn't sure what --

3 A. You know --

4 Q. -- you were referring to.

5 A. -- and to that degree, you know, the
6 reason we're sitting here today is at the urging
7 of my -- and direction and urging of my management
8 at the time. I didn't know who Cooper Elliott
9 was. That information was provided to me by my
10 chain of command and based on their interpretation
11 of the events, and your -- and the violation of my
12 rights that I really need to get counsel. And it
13 wasn't because I did something wrong, it was
14 because of what happened to me and their opinions
15 of it. And I was provided with -- with the
16 information. Because, I mean, I wasn't looking
17 for a fight. I was looking for, you know, I'm --
18 I'm left in a bad situation. I'm injured. You
19 know, I -- the way -- the manner in which I was
20 treated when I was trying to do my job by who I
21 thought was going to be another fellow law
22 enforcement officer coming to help me out and have
23 some dialogue with, like it's always been. So,
24 yeah, their opinions I held in high regard because

1 I was very honest. Be honest with me. Tell me.
2 Listen, you -- what they did was wrong. And this
3 is -- this is egregious and, you know, you didn't
4 violate any policies, any orders you don't have
5 anything to worry about. And you know what, this
6 is -- this is really bad, you need -- you really
7 -- here's -- here's who you -- you know, here's
8 what we suggest you do, and -- you know, and I did
9 that. And I did it and, you know -- and it ends
10 up of course, you know, nowadays it's splashed in
11 the newspaper and media, and nothing was
12 happening. Now all the sudden that and, you know,
13 I -- you know, we've got to do something about it
14 is headquarters opinion and, you know, I've got to
15 -- I'm one person trying to fight, you know, ATF
16 headquarters and convince them otherwise and they
17 have an agenda and my agenda was to just go about
18 doing my job, so here we are.

19 Q. Do you remember who it was that gave
20 you Cooper Elliott's contact information?

21 A. Roland Herndon, my ASAC.

22 Q. Rowland Herr?

23 A. Herndon.

24 Q. Herndon?

1 A. He's since retired. That came through
2 him and -- and that was provided -- I met with
3 him. And he said he'd get me the contact of who
4 -- who I should call as -- as representation. And
5 that number was I believe given to my -- or my RAC
6 at the time or RAC Occhipinti, it wasn't -- yeah.
7 And then he said, here, this is the number from
8 Roland. And I went okay. And I'm like okay.
9 And, you know, I just kind of went with their
10 guidance. You know, I figured they had my best
11 interest at heart. And, you know, they were --
12 they had a good assessment of the situation. They
13 were aware of things I wasn't aware of, you know,
14 before I was even aware of them, you know, for
15 reasons we'll probably talk about.

16 Q. Turning back to the settlement
17 agreement just briefly.

18 A. Yeah.

19 Q. You agreed as part of this agreement
20 that you would withdraw the appeal you had
21 submitted; is that right?

22 A. What page are we on? That was the
23 fourth --

24 Q. I believe it is page 2 at the very

1 bottom, the little b there.

2 A. Okay. It just helps me look.

3 Q. Of course.

4 A. By...signature...Appellant
5 withdrawals...prejudice...appeal...above-captioned
6 MSPB...and voluntarily waives any and all further
7 rights to appeal. Okay. Yeah. And it includes
8 any -- any appeals MSPB and -- okay. Appeal. And
9 as well as any other pending employment-related --
10 right. It's -- it's a done issue. They corrected
11 the record. My separation from ATF is based on
12 the injuries sustained, not because they
13 terminated me for cause or conduct unbecoming.
14 So, yes, that's --

15 Q. Uh-huh.

16 A. And I agreed that we're done. This
17 is -- you know, there's -- there's no more
18 anything after that to be done. And there was
19 some stipulations as to if I ever used ATF for a
20 reference and stuff, they would have to, you know,
21 provide a reference for my job -- or for a job or
22 employment or something in a fashion that -- you
23 know, who to contact and stuff like that. And,
24 you know, just general -- general understandings

1 and that. That was -- that's the way I understand
2 it.

3 Q. Uh-huh. The only other specific
4 question I wanted to ask about was on page 3.

5 A. Okay.

6 Q. Initial the d and the e. Do you
7 understand that to mean that you're agreeing not
8 to sue ATF about this appeal or this process?

9 A. Release...forever discharge both United
10 States and ATF -- yeah, that would be my
11 understanding. They're -- they're wanting to make
12 sure that there's not legal action against them
13 for anything they've done to me.

14 Q. Gotcha. And I'll skip that.

15 A. That would be my understanding. I
16 mean, there's a lot of jargon there. But it's
17 what I'm seeing there, would be forever
18 discharge....United States Department of Justice
19 and ATF...as their employees officials, et cetera,
20 et cetera, capacities and -- you know, it's --
21 yeah. Basically, no legal action against them.

22 Q. Okay. Thank you. I think we're done
23 with that document for now, as long as you're done
24 with it as well.

1 A. Uh-huh.

2 Q. I'm going to show you what I'll purport
3 to be a position description for your roles at
4 ATF.

5 - - - - -

6 Thereupon, Exhibit 11 is marked for
7 purposes of identification.

8 - - - - -

9 A. Okay.

10 Q. And sort of talk about that more
11 generally. I'm going to mark it Exhibit 11. That
12 goes to you.

13 MS. PICKERILL: There you go.

14 A. Uh-huh.

15 Q. I think that this is from 2016; is that
16 right?

17 A. Yeah. Maybe -- if that -- if the --

18 Q. Or --

19 A. If the 16 at the top of the page is
20 referencing the year, I -- like I said, there's a
21 face document here.

22 Q. So --

23 A. And then there's additional
24 documentation on the back, so I'm not quite sure.

1 It looks like to be two documents. This is a
2 document in and of itself with this added to it is
3 -- I don't know. Maybe it's an attachment or an
4 addendum. So that has 16 at the top dash 131,
5 this front one has 7-2008 on it is.

6 Q. Okay.

7 A. So I'm -- when you say document,
8 there's two.

9 Q. So Exhibit --

10 A. In my opinion.

11 Q. -- 11 is --

12 A. Probably in a document with an
13 attachment.

14 Q. A document with an attachment. Both of
15 these being documents about your position at ATF;
16 is that accurate to say?

17 A. Looks like a general job description of
18 a --

19 Q. Okay.

20 A. -- of a criminal investigator 1811
21 series.

22 Q. Okay. And is that -- would that have
23 been your position description in 2020 as well?

24 A. Yes. And the 13 indicates -- indicates

1 your seniority grade.

2 Q. Okay.

3 A. Or actually, yeah, you're -- you're --
4 it has to do with your pay grade and then there's
5 steps to that. But, yeah, that's accurate, 1811,
6 grade 13, and I was a step 7 at the time.

7 Q. Step 7. Okay.

8 On page -- I'm going to say 377 because
9 that's what's in the bottom right-hand corner.

10 A. Okay.

11 Q. It talks about your Supervisory
12 Controls. Would that section have been an
13 accurate description of what your supervisor
14 structure looked like in 2020 when you were doing
15 those NICs runs?

16 A. "Incumbent works under general
17 administrative and technical direction of a
18 group...or branch chief." Yep. "Advice and
19 guidance.... Incumbent conducts...generally uses
20 his/her own judgement...reviews case" -- yes.

21 Q. Okay. It says that "The supervisor
22 reviews case reports." Do you do case reports for
23 everything or when do you do case reports?

24 A. In general or as it pertains to what my

1 duties were at the time?

2 Q. As pertaining to your duties in 2020.

3 A. Case reports are generated when -- in
4 this case for the NICs retrievals when there's
5 a -- you know, obviously you're taking -- you're
6 facilitating the retrieval of the firearm, it
7 doesn't matter whether it's -- it goes to the FFL
8 or it's a third-party transfer or you seize it,
9 you have to generate what's called an ROI, it's a
10 report of information.

11 A case report by clarity is not an ROI.
12 An ROI -- a case report in -- in ATF terms is a
13 culmination of ROIs and investigative material
14 that is presented to the U.S. attorney's office
15 for review and for potential prosecution. So
16 they're kind of using case report I think possibly
17 to represent an ROI on a day-to-day report of
18 activity -- of information, so I just wanted to
19 make that clear.

20 Q. Okay.

21 A. But, yes, you submit your ROI. This is
22 -- this is the event that happened or guidelines
23 to when you have to do an ROI and when you don't
24 have to do them. But in -- in the purposes of my

1 position, I -- I always -- I did ROIs for every
2 recovery. And in some instances if it became
3 multiple events that warranted an ROI, there may
4 be additional ROIs as part of that single case.

5 Q. Uh-huh.

6 A. But -- and then you submit those, put
7 them in the inbox, he reviews them, checks them
8 off, you know, and, you know, he -- he knows, you
9 know, and then they go into the case file which is
10 assigned a case number. Every case it -- it
11 doesn't matter what it is. And then they go in
12 there and that's the hard copy record of that
13 case.

14 Q. Okay.

15 A. So it's just one component of what may
16 comprise the case file. And they're referred to
17 as ROIs in -- in the ATF.

18 Q. Okay.

19 A. Case reports are a culmination and it's
20 submitted for prosecution.

21 Q. Specifically for prosecution?

22 A. Yeah.

23 Q. Okay. So in the course of what your
24 job required in 2020, you weren't necessarily

1 creating case reports, but you would have been
2 creating ROIs?

3 A. I mean, I certainly wouldn't if I was
4 going to present the case for prosecution. I
5 would put together a case report, it's what we
6 called it.

7 Q. Uh-huh.

8 A. It was a blue cover, it was a
9 wrap-around, and it was filled with all the -- all
10 the components that substantiated the case. Here
11 is everything. Sometimes you didn't have
12 everything or maybe you didn't. Or the prosecutor
13 said, hey, can you get me this, too? I would like
14 this and then that gets added. But it was your,
15 hey, this thing is ready to be reviewed, let's,
16 you know, put it before a grand -- you know, do we
17 grand jury it or direct -- you know, support the
18 prosecution. So --

19 Q. Uh-huh.

20 A. -- yes, it's just would I have done
21 that if the situation dictated, absolutely. It's
22 part of your job as a criminal investigator. It's
23 no different than what anybody else is doing, it's
24 just a different focus.

1 Q. Uh-huh. So just not every case will
2 get a case report?

3 A. No, some cases they just don't go
4 anywhere, they fall apart or they -- you know, I
5 mean, there's a case number when you open -- you
6 start an investigation, it's got a case number.
7 And then depending on where the investigation goes
8 depends on whether it ever develops into a
9 prosecutable-type of case.

10 Q. Uh-huh.

11 A. You know, there's the input from the
12 supervision, there's the input from the U.S.
13 attorney's office, you know, there's a lot of
14 people that have to, you know, be in -- on the
15 same page in order to support the prosecution.
16 But that's what has always been known as a case
17 report. It was the finality of everything
18 together and the presented material was the case
19 report.

20 An ROI is the -- is the report of
21 activity in support of the case report. The case
22 report is usually made of a -- any number of ROIs,
23 it could be one, two, three, 100. It just depends
24 on the length and the duration of the case.

1 Q. Uh-huh. And so when you send both your
2 ROIs and your case reports to your RAC to look at?

3 A. That would -- the norm -- yeah, of
4 course it goes to your first front line
5 supervisor. And he reviews it, signs off on it,
6 and you go -- you go from there.

7 Q. Okay.

8 A. And if I'm correct, he has the
9 authority to sign on behalf of the SAC for those
10 type of things, for ROIs and that. He can sign
11 for that because there is a spot on there I
12 believe has either the ASAC or SAC, but you can --
13 his approval is all you need to continue doing
14 what you're doing.

15 Q. Okay.

16 A. And then it becomes a record. But I
17 believe he has some authority to sign in place I
18 think.

19 Q. Okay.

20 A. And I can't remember. It may have
21 changed, I don't know. But either way, it's an
22 ROI, a report of information.

23 Q. And so do you have to wait until you
24 get that approval before you can keep working on

1 that particular case?

2 A. No. It's -- it's not -- no. No. No.
3 No. It's -- the reports are essentially reports
4 of what you've done, not what you're asking
5 permission to do. So in the case of a NICs
6 retrieval, I'm compiling a case file with all the
7 supporting documents that I have. Now, could that
8 ultimately depending on where this case goes,
9 depending on the person's criminal history,
10 depending on -- I mean, there's any number of
11 variables. Could that then all that information
12 be developed into a case report and presented for
13 prosecution, absolutely. Normally in the NICs
14 investigations, that's -- that's usually not the
15 case because even though it's a, you know, an -- a
16 critical thing needs to be resolved, it's --
17 there's so many of them. There's just so many of
18 them, you -- the U.S. attorney's office just can't
19 accept them. And so the ROI is -- all that is is
20 a report of what you've done. You still can go
21 forth and do things in the investigation, that's
22 just a report of what you've just done, that's all
23 that is. It's not a -- you don't have to be a --
24 granted an approval on an ROI to then continue --

1 Q. Okay.

2 A. -- your investigation.

3 Q. Okay. And so what is -- like, what's
4 the supervisor reviewing the ROIs for and signing
5 off on them?

6 A. Well, he shouldn't. But, you know, if
7 he's paying attention, he's looking for
8 grammatical errors. You know, I can't -- every --
9 you've got a multitude of agents, so you get all
10 different things, some would be better than
11 others. Conciseness, does it -- is it -- is there
12 anything that springs out to him as obvious or
13 maybe there was a step or something missed or,
14 hey, what about this, what about that. And
15 honestly, I don't -- I don't recall ever really
16 having to be that case, I'm pretty thorough and
17 detailed and I did everything in a very systematic
18 fashion that other than, you know, who it was and
19 information regarding the firearm and some of
20 those things, you know, I was very exact in what I
21 did. So rarely did I have that conversation
22 about, hey, can you fix this, do this or where is
23 this, so -- but, yeah, that's -- essentially he's
24 just giving it a once over to make sure there's no

1 glaring problems.

2 Q. Makes sense.

3 A. Because it is an official document.

4 Q. Is there any standard or process of how
5 much information you have to acquire or how many
6 ROIs you need to do before you can go retrieve a
7 firearm?

8 A. The -- in these NICs cases, the -- the
9 ROI is not generated until after the retrieval is
10 made. That is the -- that is the action that
11 needs to be documented. It's not an ROI that
12 says, well, I ran a criminal background check
13 today, you know, I made phone calls to the clerk's
14 office. You have a case management log that kind
15 of just helps you organize your -- the things
16 you've been doing day to day.

17 Q. Uh-huh.

18 A. But the ROI is saying, hey, on this
19 date and time, you know, received information, you
20 know, NICs Brady Operation branch regarding, you
21 know, subject A determined to be -- by FBI
22 determined to be a prohibited person based on
23 blah, blah, blah. On this date and time, you
24 know, conducted an additional background check and

1 you're -- you then document in the ROI, at least I
2 did, of my investigative steps that came to the
3 determination that this person is in fact
4 prohibited per ATF, not FBI, per ATF. And then it
5 also includes the fact that on, you know, the next
6 paragraph on this date and time, ATF agent --
7 Special Agent Burk made contact with subject A at
8 his residence located at blah, blah, blah, was
9 advised, subject stated they had the firearm,
10 blah, blah, blah. Agent took possession. Advised
11 subject, you know, that he'd -- he'd be allowed to
12 return the firearm to the FFL on this date. ATF
13 agent contacted the FFL, agreed to return the
14 firearm. So that is then submitted at the -- at
15 the culmination of those activities to document
16 here's how this -- here's how this was handled.

17 Q. Okay.

18 A. So there's the record that confirms
19 that that firearm was in fact retrieved and is no
20 longer in that person's possession.

21 Q. Okay. So how do you -- how do you
22 learn about these firearms?

23 A. Meaning?

24 Q. So if the first time -- I'll go back.

1 So how do you learn that someone might
2 be in possession of a restricted firearm?

3 A. You get a Brady operation branch NICs
4 referral report. That comes in from head -- from
5 the NICs -- ATF NICs section who -- who has a
6 liaison that works with FBI. So they -- here's
7 what we have. They give it to them. They look
8 through it. They then send those reports out to
9 the prospective geographical division that would
10 cover that area of where that person may live.
11 Sometimes it's where the FFL's at or maybe where
12 the subject lives. Usually where the FFL's at.
13 Then that goes out to the division.

14 The division would then distribute
15 that. In this case, all those reports came to me.
16 And then I would see the intended purchaser. I
17 would see what firearm they purchased, the
18 identifiers, the date of purchase, the date they
19 were denied, whether it was a standard denial,
20 whether this firearm was in fact transferred and
21 whatever information that FBI would have initially
22 gleaned to make their decision. I then start with
23 that as a foundation and then build from that
24 until we have enough information to confirm that

1 either the person, in fact, is not prohibited,
2 which happens a percentage of the time, or in fact
3 they were. We -- we uphold the FBI's
4 determination and -- and -- and go -- they'll have
5 to facilitate the retrieval of the firearm. But
6 we do not go and do that until we are absolutely
7 100 percent sure.

8 And our process was for me to do the
9 case workup, do all the investigative things, make
10 a determination, and then I would submit that to
11 our division counsel. She'd give it another
12 thorough legal look over. If she had any
13 questions, answers, we kind of worked together.
14 And then she would say I concur with your
15 decision. Or she may say, well, you know, could
16 you -- could you get this other document or
17 something? Okay. Yeah. Great. Whatever. And
18 then, okay, great. Now I feel good; I agree. You
19 know, so there was a -- for Columbus field
20 division there was a very thorough process. I --
21 and at least -- and those were the four years that
22 I was running that program. That's how it was
23 done and it was done that way in every case.

24 Q. So you would submit a write-up with

1 sort of the evidence and the backup for why the
2 retrieval is appropriate, but that's different
3 than an ROI?

4 A. What do you mean submit a write-up?

5 Q. You said that as you get these cases
6 from the FBI and then you do the research to make
7 sure that the determination is appropriate?

8 A. Correct.

9 Q. And then you said you would submit a
10 write-up.

11 A. No. I never said submit a write-up.

12 Q. Okay. What did you say?

13 A. I said I'd contact our division
14 counsel.

15 Q. Okay.

16 A. And then I would say here's a case for
17 review, a delayed denial. I'd give her the name,
18 case number, I would attach some documents that
19 were very -- maybe the new documents that weren't
20 contained in the original FBI determination, I'd
21 maybe add those as attachments in the email. But
22 then she would then be able to go in
23 electronically and also look at the case work and
24 all the things that were attached as part of the

1 case. So she can access the case, go through
2 everything I have, look for what she may be
3 looking for to make what -- what she is thinking
4 they need to see in order to say I concur. But
5 she can access the case, it's a -- it's an
6 electronic case management system so she can acc
7 -- you know, depending on your approval status,
8 you know, you can access it. So there's nothing
9 really submitted. Like, it's, hey, I took a look
10 at it, I agree, I concur. He's -- and I would
11 keep that email as part of the record so to show
12 that it wasn't only my decision, but it was also
13 the decision of our division counsel. So those
14 were the steps. But she can access every agent's
15 case, too, to look and put legal review on things.

16 Q. Okay. So you're gathering evidence and
17 documents. But the first time that you're putting
18 anything in sort of a formal summary is that ROI
19 after the retrieval?

20 A. Well, everything is entered -- all of
21 your documents -- everything you're building is
22 entered into Nforce, which is your electronic case
23 management system. So things are accumulated and
24 organized and compartmentalized and put in folders

1 in there.

2 Q. Okay.

3 A. The only thing in your investigative
4 step that you're going to need to -- at least
5 initially is if you go out and you retrieve a
6 firearm, you're going to then memorialize that
7 action in your -- in your first ROI. And in --
8 generally in these cases if there's no other
9 circumstances that spinoff of this, that also has
10 to be documented, then it's usually that single
11 first report, you know, it's usually about a three
12 -- maybe a three page report or something. It's
13 all encompassing from the initial information you
14 got, all the way through the retrieval process.
15 You try to sum it up in a single report, because
16 you're moving onto the next one. As long as you
17 have everything in there that substantiates that
18 that firearm was -- you know, that that person was
19 prohibited and, you know, authority allowed you to
20 go ahead and take that possession from them. And,
21 you know, obviously you articulate that you have
22 transferred it or returned it or seized it.

23 Q. Uh-huh.

24 A. And then there's other forms that kind

1 of go with that stuff, too. But it's -- the ROI
2 encapsulates all that.

3 Q. Okay. So talking specifically about
4 the incident that is involved in your lawsuit.

5 A. Uh-huh.

6 Q. Did you go through all of those
7 investigative steps that we just talked about for
8 this --

9 A. Absolutely. I do it that way on --

10 Q. -- investigation?

11 A. -- every -- every NICs case, I do the
12 same fashion. Very methodical about it.

13 Q. Okay. Who was the firearm -- who
14 possessed the firearm that you were looking for?

15 A. Well, it was my belief based on the
16 investigation that I did that -- and the
17 pronunciation of his name is -- I don't have that
18 down exactly. But Suleiman, Mr. Suleiman I guess.

19 Q. First name Ala?

20 A. Possibly. Without looking at the form,
21 I -- yeah.

22 Q. Okay.

23 A. Something of that nature. And he would
24 have been the original -- the purchaser of the

1 firearm in question. So based on the fact that he
2 purchased it and the information I had, it was
3 believed that he would likely be the first person
4 or the -- or the current possessor of it. That's
5 not always the case. But that's what I would have
6 believed, that's what ATF would believe and that's
7 what division counsel would believe. So that's
8 where we start in terms of the retrieval process
9 is who purchased it. Who's on paper as the
10 purchaser. Now, that doesn't mean he has it, it
11 just means he purchased it.

12 Q. Uh-huh.

13 A. He possessed it at some point in time.
14 Now -- now we need to find the gun.

15 Q. Okay.

16 A. And sometimes there is a series of
17 steps to do that because it has changed hands.

18 Q. So was your plan that day to retrieve
19 the firearm?

20 A. My plan that day was just to knock and
21 talk to Mr. Suleiman to explain to him that he is
22 prohibited, he was found prohibited. Obviously,
23 he's going to confirm that he -- or that he
24 purchased the firearm because it's on paper. I

1 mean, there's a record of it. And then discuss
2 with him the whereabouts of the firearm. In many
3 instances, they're like, well, yeah, I still have
4 it. It's, you know, here, there. Or, well, I
5 don't have that anymore. I -- you know, I --
6 there's something, and then we take the next steps
7 from there.

8 So it's always about initial contact,
9 creating a dialogue, locating the weapon and also
10 informing the person that they are prohibited and
11 showing them -- you know, it's not just my word.
12 Here's -- here's the documentation. And a lot of
13 times, you know, here you go. I can't give them
14 copies of the documents, obviously. But I'll
15 show, here. Here your -- does this conviction
16 back in 19, you know, 82 for, you know, whatever
17 it may be, does that -- oh, well, yeah. I forgot
18 about that one. And, you know, so you're --
19 you're just working with them. You want them to
20 be educated because you don't want to have to come
21 back to this house because they did it again.

22 So, you know, my intention was to -- to
23 contact him, have a dialogue or have a dialogue
24 with somebody that's at that location. One, is it

1 his -- does he actually live there? And then in
2 many instances you end up talking to a spouse or
3 girlfriend, they're not concerned, but they're
4 concerned, they want to know. It's not a secret.
5 Hey, this is about a firearm. Can you -- you
6 know, where's he at? Can you give me an address
7 where he's at? And you bring them up to speed
8 because you don't want everybody all frazzled
9 because the government came to your house. So
10 it's like, listen, we have to solve this problem.
11 Here's what it's about. No one's under arrest,
12 you know, unless something bad breaks. And let's
13 figure it out. And it's just never been an issue.
14 It's never been an issue until 7-7-20. But my
15 intent was just to make contact with them.

16 Q. Okay. And you were retrieving this
17 firearm because of an immigration issue; do I have
18 that right?

19 A. That was his prohibiting -- that was
20 his -- the prohibitor that was cause for his
21 denial, yes.

22 Q. Okay.

23 A. And that was confirmed with the -- with
24 an ICE agent who referenced his file and informed

1 what his -- his current immigration status was.

2 And that was part of the information submitted to
3 the division counsel.

4 Q. Okay. This -- this wasn't a case where
5 you were recovering a firearm from a convicted
6 felon, was it?

7 A. No. He -- he had no criminal record
8 other than an immigration prohibitor, which is one
9 of the nine prohibitors for -- it makes you
10 prohibited. You have to have a certain
11 immigration status, and he didn't have it. It was
12 still pending. His immigration status had not
13 been resolved; therefore, he's prohibited from
14 possessing a firearm in the country.

15 Q. Okay.

16 A. So -- but he went and purchased one
17 anyways.

18 Q. Gotcha.

19 I think we may have talked about this,
20 but you didn't have a warrant to recover this, it
21 wasn't a case where you needed a warrant --

22 A. Does not.

23 Q. -- was it?

24 A. It doesn't require a warrant, no.

1 Q. Okay. So in terms of your case reports
2 and submitting them to your supervisor --

3 A. Uh-huh.

4 Q. -- what does it mean for one of your
5 cases to be reviewed but still pending?

6 A. Reviewed but still pending?

7 Q. If --

8 A. I'd have to look at kind of what you're
9 reference is.

10 Q. Yeah. I realized now that was perhaps
11 not the best way to ask it.

12 You had talked about an interview that
13 you did with some -- with ATF in relation to the
14 investigation into conduct. Do you remember that?

15 A. Can you rephrase that question, please.

16 Q. Yes, I can.

17 Do you remember doing an interview with
18 ATF while they were investigating your conduct in
19 2021?

20 A. The only interview I had was the
21 initial interview, pro -- post the event. I don't
22 know a week or --

23 Q. In August 2020?

24 A. Yeah. It was maybe a week or two

1 later, something of that nature.

2 Q. Yeah.

3 A. Yes, that was the interview that I had,
4 ATF.

5 Q. Okay.

6 A. ATF internal investigators because of
7 the -- there was force involved in the incident,
8 either way.

9 Q. I'm going to mark this as Exhibit 12.

10 - - - - -

11 Thereupon, Exhibit 12 is marked for
12 purposes of identification.

13 - - - - -

14 A. Okay.

15 Q. And on page 6 in your answer there,
16 it's maybe 10 lines down. The sentence starts
17 with, "So, that came to me...."

18 A. Okay. Over. Yeah. Yes.

19 Q. Okay. Do you know what you meant when
20 you said the case was reviewed per normal standard
21 procedure but it was still pending?

22 A. I'm looking. I'm looking where you see
23 that at. 10 lines down.

24 Q. Oh. Here. I can hand --

1 A. Page -- oh, I'm sorry. What page?

2 Q. Six.

3 A. Sorry. Wrong page.

4 Okay. Help me out here. Six. Okay.
5 Hang on a second.

6 Q. Sorry. I underlined it in orange and
7 pink if that helps.

8 A. Okay. I'm sorry. It's a back page. I
9 was looking at single faced, so that's why I
10 couldn't find it. Do you know what I'm saying?

11 Q. Oh.

12 A. You've got five, and six is on the back
13 of five instead of being --

14 Q. Oh.

15 A. I wasn't prepared for that.

16 Q. I apologize.

17 A. I'm looking and I'm like I don't have a
18 page 6. Anyways. Okay. So investigation came to
19 me. I handle primarily all the NICs
20 investigations.... that came...and I worked with
21 it and I -- so that came to me, I worked with it,
22 you know, per normal SOF provided it
23 was...pending...prohibitor is -- yeah, it hadn't
24 been resolved. It's -- the -- the case, it's

1 pending, it's -- it's still open. That's what
2 that meant.

3 Q. Okay.

4 A. Yeah. Meaning the firearm is still out
5 there.

6 Q. Okay. Makes sense.

7 Did you have to get approval from
8 anyone before traveling to Columbus to retrieve
9 this -- or to attempt to retrieve this firearm?

10 A. Yeah. I keep -- keep my first line
11 supervisor informed of my activities.

12 Q. Okay. Did anyone else know that you
13 were coming up to Columbus to recover the firearm,
14 anyone else within ATF?

15 A. I don't know for sure. But if I spoke
16 with another agent that day or another co-worker,
17 said, hey, what are you up to today? Well, I'm
18 helping -- I've got to go to Columbus for a
19 retrieval today. And so, you know, would somebody
20 else be aware? I mean, we communicate. We --
21 when we're on the job, we usually tell each other
22 what we're up to, what's going on. You know,
23 because then, you know, then it -- it's just --
24 it's just talk, it's just what we do. But, you

1 know, your supervisor needs to know where you're
2 at. So he knows, hey, what do you got going?
3 Well, I'm going to head up to Columbus on a NICs
4 today and then I've got to run over Indiana, and
5 then, you know, maybe -- maybe back to Cincinnati
6 if I can do it all in one day. So he's aware of
7 what I'm doing, yeah, absolutely.

8 Q. Is that supervisor in Cincinnati?

9 A. That's my first line supervisor.
10 That's Frank Occhipinti --

11 Q. Okay.

12 A. -- at the time.

13 Q. Were you planning to do any other work
14 while you were in Columbus?

15 A. I don't -- I believe my intention that
16 day was there's another case, but Columbus in the
17 route of travel was the first one I was going to
18 go to. I -- I can't say for sure because
19 everything kind of changed after that day. You
20 know, I -- I usually try to do as much as I can in
21 one day. And I would likely say there was
22 probably another residence or another person if I
23 had the case at the point where it was ready --
24 you know, the denial was confirmed. I just don't

1 know if I -- you know, there would have been
2 records and files with me of course they were in
3 my case file -- or my car and all that. But I --
4 I don't know for sure where I was heading after
5 Columbus.

6 Q. Okay.

7 A. Logically I would be, though, likely.

8 Q. Okay. When -- what are instances --
9 actually, I think we've covered that.

10 Did you tell the Columbus ATF office
11 that you were going to be sort of in their neck of
12 the woods?

13 A. No. There's no reason to.

14 Q. Okay. We talked about that.

15 Looking at your Position Description,
16 which is Exhibit 11.

17 A. Yes.

18 Q. On page 376, it anticipates as part of
19 your job "In initiating or conducting criminal
20 investigations, incumbent generally utilizes
21 elaborate planning and coordination to resolve and
22 overcome complex jurisdictional problems involving
23 other Federal, State, county or local agencies."

24 A. Uh-huh.

1 Q. What are some of those jurisdictional
2 problems that you guys have to work around?

3 A. The biggest one is whether that person
4 is -- is currently involved in a -- in an
5 investigation maybe for similar circumstances. So
6 you have two agencies focused on the same subject
7 conducting the same, similar type operation, so of
8 course you don't want to get in a -- in a
9 situation where you're trampling over somebody
10 else's investigation. I mean, that's -- that's
11 really the paramount thing is -- is -- and there's
12 a term for it. Deconflicting --

13 Q. Okay.

14 A. -- is the term we use. Deconflicting.
15 So you deconflict with the other agency. You
16 know, these are -- these are enforcement-type
17 operations and stuff like that. Usually
18 preplanned stuff that's going to be a little heavy
19 or a little more presence of nature, you're going
20 to have multiple agents maybe in that area, cars,
21 marked up, and it's like, you know, hey, what's
22 going on kind of thing. But it's usually for de
23 -- you know, de -- so you don't step on each
24 others' investigative toes. It normally is.

1 Q. Uh-huh.

2 A. And again it's generally -- is it not
3 always the case, no. Because sometimes,
4 unfortunately, there's sensitive reasons why you
5 don't want the local law enforcement to know.
6 Maybe they have somebody that you've got
7 information that is providing information or the
8 case is so sensitive that it -- they can know the
9 day it's going to happen and not any time sooner.
10 So there's -- there's reasons for things. And
11 we've had those kind of things happen. So there's
12 a lot of variables there is what I'm saying.

13 Q. Uh-huh. Was there a reason in this
14 case that you didn't want local law enforcement to
15 know about the operation?

16 A. It's not that I didn't want them to
17 know. It's that I wasn't really -- I wasn't
18 required. It's not policy that I have to notify
19 them. It's -- it's an -- you know, essentially an
20 administrative contact, you know, it's not a
21 planned operation. It's knocking on somebody's
22 door to explain to them that there's a problem,
23 show them some paperwork. If the gun's there,
24 great, we'll fix the problem. But, no, there -- I

1 saw no -- absolutely no reason. There was no --
2 it wasn't in a high crime area. The person didn't
3 have an extensive record. There was -- there was
4 absolutely no need to draw other resources into
5 this situation.

6 Q. And you were -- you were alone on this
7 run, right?

8 A. As I was on most of them.

9 Q. Okay.

10 A. Almost --

11 Q. Sometimes -- go ahead.

12 A. Primarily all of them, except for again
13 in -- in certain situations where there was more
14 of a potential threat to myself, then it made
15 sense tactically speaking, yes.

16 Q. Okay. How are you trained to retrieve
17 firearms if they are inside of, like, a personal
18 or a private home?

19 A. Well, I establish, one, that they have
20 it. And if they do say they have it, I ask them,
21 you know, well, where do you have it? And if they
22 say, you know, I've got it under the couch --
23 normally what I would do is if they -- is if I've
24 established the dialogue and they say they have

1 it, then I'd say, well, do you mind if I step in,
2 you know, if you are going to retrieve the
3 firearm. And you talk sense to them. Oh, yeah,
4 no problem, no -- you know, this, that and the
5 other. And, you know, and then you -- well, where
6 -- and I would just walk with them to where it's
7 at, and they'd show me. And I'd say don't pick it
8 up. I'll take possession so that it's secure,
9 make sure it's unloaded. Create -- make it safe.

10 And then we'll say, okay, now I have it
11 so, here, let's -- here's a couple options we can
12 -- you know, what -- and, you know, sometimes
13 depending if they're, you know, really nice, we're
14 like, well, which one -- I'll be willing to call
15 the FFL and see if they'll work with you. They
16 don't have to. Or if you have a third party.

17 Now, if those options aren't there, and
18 I've had that happen, well, I'm sorry, but, you
19 know, here's how you can appeal the process.
20 These -- and I would give them the steps. And I
21 would be very clear I'm not giving you legal
22 advice, I'm just saying here's the steps you need
23 to go through. And a lot of times they don't know
24 what to do. And I give them that information and

1 they're, like, oh, man, I don't know -- thank you.
2 Thanks for helping me figure out how to solve
3 this. And I said when you do, then, you know,
4 when you are not prohibited, then it's not an
5 issue. But until then -- so I'll take possession.
6 So usually a permission-type thing.

7 Now, if they're, like, you know, if
8 you're possessing the firearm, you know, I mean,
9 there's been -- there's -- it's all about
10 dialogue. It's about making them comfortable and
11 maintaining your safety at the same time. And
12 most of the time it's, yeah, because they don't
13 want to -- now that they've said I have the gun,
14 they don't want you any more on edge either
15 because obviously it's a situation with a firearm
16 and you are law enforcement. So normally you
17 would go in and just follow them and, I mean,
18 retrieve the firearm. Sometimes it's in their car
19 and then you're like, okay, and we walk out to the
20 car. So, you know, of course taking all the
21 safety, normal safety protocols. But again, I
22 mean, I've never had an issue.

23 Q. Uh-huh.

24 A. So that's normally how it would be

1 done.

2 Q. I think we've talked a little bit about
3 sort of what you were dressed in that day. Would
4 you describe it as office attire?

5 A. I would describe it as exactly what I'm
6 wearing here today. A gray polo, tactical-type
7 pants, the exact same footwear, these green --
8 tactical green kind of boots, except in this case
9 I have my wallet in my left pocket instead of my
10 credentials. I always kept my credentials in my
11 left pocket because my pistol is on my right. And
12 if you have to produce them, you produce them with
13 your left hand, not your right hand. Because if
14 you ever need to refer to your firearm, you don't
15 want to have something in your hand to do it.
16 This is exactly what I had on that day.

17 Q. Okay.

18 A. Not the same shirt. Exactly what I had
19 on today is what I'm wearing today.

20 Q. Okay.

21 A. I mean just to help illustrate.

22 Q. Yeah. Thank you.

23 And just to clarify. On the day in
24 question, you had a pistol on your --

1 A. Pistol on my --

2 Q. -- right hip. And you do not have one
3 today?

4 A. No. And I don't -- I don't have
5 credentials obviously with me.

6 Q. Okay. Thank you.

7 At the time you had an ATF vest in the
8 back of your car; is that right?

9 A. I had ATF -- yeah. There was a
10 tactical vest back there, yes. A tactical vest,
11 there was rifle, there were other tactical attire
12 that would be worn in the event that there was a
13 necessary response to tactical situation, those
14 could be on the fly. So you -- you just carry
15 that stuff with you, every agent does.

16 Q. Okay. Was your badge in your left
17 pocket?

18 A. In my credential fold in my left
19 pocket, yes.

20 Q. Okay.

21 A. It has my photo, it has my authority
22 written in there, and then it also has my badge
23 with my badge number on it.

24 Q. Okay. Did you have --

1 A. And my --

2 Q. -- a badge or credentials around your
3 neck or on your belt?

4 A. No.

5 Q. Or anywhere else?

6 A. I would not normally do that. No, not
7 in those -- not in this type of situation.

8 Q. Okay. What kind of car were you
9 driving?

10 A. I was driving a 2018 black Kia Sorento.

11 Q. Was it a marked car?

12 A. No. None of our vehicles are marked.

13 Q. Okay.

14 A. But it is -- it is outfitted with
15 emergency lights and a radio, yes.

16 Q. Okay. Emergency lights, like, a top
17 bar?

18 A. Not -- no. It would be a bar like a
19 cross -- inside, it's --

20 Q. Okay.

21 A. It's not obvious on the outside, but I
22 have the controls inside. I can flip it so if I
23 ever had to utilize it to get somewhere in an
24 emergency fashion, you have the blue -- blue and

1 red flinkers, you've got the siren. It's all
2 that, but it's all packaged in a vehicle like
3 that.

4 Q. Gotcha.

5 When you got to Edgebrook Drive, where
6 did you park the car?

7 A. Generally probably just a space or two
8 over from maybe the -- the front of the residence.

9 Q. Okay.

10 A. You know, I don't usually park directly
11 in front, but it might have been the available
12 spot at the time.

13 Q. On the --

14 A. But I'm not going to park way down the
15 street and walk. I'm going to park, you know,
16 obviously somewhat close if I have to retrieve a
17 document or an additional thing from the car,
18 but --

19 Q. Okay.

20 A. So it would have been somewhere in the
21 general front of the residence.

22 Q. Okay. On the same side of the street
23 as the house?

24 A. Yeah. Yeah.

1 Q. Can you tell me what happened when you
2 first knocked on the door?

3 A. I first knocked on the door, I didn't
4 hear anything, and so I knocked again. And then I
5 could hear some type of movement, rustling around
6 behind the door. You know, I could tell that
7 somebody -- somebody was there. And I probably
8 knocked again. And then I got a response from I
9 believe a female. And I identified myself, you
10 know, my -- I said who I was, showed my
11 credentials and tried to establish a dialogue.

12 Q. Okay. You initially identified
13 yourself without your credentials; is that right?

14 A. No. I -- I believe I informed her -- I
15 can't recall. I'm -- I don't know -- I don't
16 believe -- I maybe would have because she would
17 not have been able to see me through the door.
18 But I advised her of who I was, federal agent, you
19 know, my name, all that kind of stuff. But I -- I
20 -- I do not recall -- well, she didn't answer the
21 door, so I couldn't have showed them this way.
22 But it's -- I did show her the credentials and at
23 -- at some point I believe through the window when
24 she was able to view them. And I'm -- I just

1 can't recall if she first viewed through the
2 window and then also looking to see who it was and
3 I held them up. But I don't know for certain.
4 But I did identify myself.

5 Q. Okay.

6 A. I just didn't say nothing.

7 Q. So you identified yourself, kind of
8 told her who you were?

9 A. Yep.

10 Q. Did you give her any other information?

11 A. I told her that I was there and I am
12 trying -- again, his name Suleiman, Ala Suleiman,
13 that that's who is -- who I was trying to make
14 contact with ultimately.

15 Q. Uh-huh. Did she -- what did she say
16 when you told her that?

17 A. She said he wasn't there.

18 Q. Okay. And so what was your plan when
19 -- or I guess did you believe her when she told
20 you he wasn't there?

21 A. Based on my experience, I -- generally
22 speaking, I had -- I had doubts because it's a
23 very common response at times. You know, and you
24 have to work through it. And I usually do that

1 with dialogue, so that they, one, can understand
2 that, you know, that this is an important issue.
3 And also that, you know, there's -- no one is
4 going to jail. It's not -- you know, and, you
5 know, a lot of times you just have to work through
6 it. Because, you know, it's easy. No, he's not
7 here. Well, okay. You know, well, oftentimes
8 they are. And, oh, well, you know, you get an
9 apology. I'm sorry. I thought you were going to
10 arrest me. And, you know, you just don't know.
11 So I really couldn't say. You know, it seemed odd
12 that you wouldn't answer the door and it was --
13 her activity was a little, like, not common. So
14 in my mind, yeah, I had reason to believe that he
15 may still be there, of course.

16 Q. Uh-huh.

17 A. Yeah. Based on her -- based on her
18 response, too.

19 Q. And so what did you say to her when she
20 told you he was at work?

21 A. I said, well, can you -- I said can you
22 please open the door? And -- so I can speak with
23 you? I have -- you know, I can show you the
24 documents. I -- I adamantly told her nobody is

1 under arrest. There's -- there's -- it's nothing
2 like that. I just need to at least speak with the
3 resident here about this situation. And -- and
4 it's just me trying to create the dialogue to
5 determine, you know, I -- I don't know if he --
6 he's not here means he doesn't live here. He's
7 not here because he's at -- he's not home. Or
8 he's not here because he's actually here, but I'm
9 telling you he's not. So there's a lot of
10 different things. And it -- I just said, you
11 know, can you please open the door? I just -- you
12 know, let me at least explain to you and show you
13 why I'm here.

14 Q. Uh-huh.

15 A. And, you know, she didn't want to open
16 the door or she started calling the police or --
17 you know, is where it then went to.

18 Q. Okay. You had mentioned earlier that
19 you took your badge -- you showed her your badge?

20 A. Absolutely.

21 Q. Did you put it back in your pocket when
22 you were done?

23 A. Yeah. I believe so. I -- when she was
24 -- said she was calling the police, I said, well,

1 that's fine. I am the police, but please do. I
2 -- I saw it as a relief for the situation because
3 I always get cooperation. I show them who you
4 are. I mean, I've been down this road several,
5 several times. And I said by all means. I'll --
6 but I'm going to, you know -- and here is my name,
7 she asked my name. She asked my agency. She
8 asked my badge -- you know, to see my badge. She
9 asked my badge number. All of this was provided
10 to her, in turn she was providing it to Columbus
11 dispatch.

12 Q. Okay. How long would you say you were
13 on the porch trying to have this dialogue with her
14 before she called the police?

15 A. A couple minutes maybe.

16 Q. A couple minutes?

17 A. Couple minutes, yeah.

18 Q. Okay.

19 A. I can't say for sure. But it wasn't a
20 long time.

21 Q. Uh-huh.

22 A. Yeah. It wasn't a long time.

23 Q. And -- and so what -- I mean, and so
24 what do you do if -- if the homeowner who's not

1 your suspect won't answer the door? Do you have
2 options?

3 A. You know, like I said, her -- her
4 conduct --

5 Q. Uh-huh.

6 A. -- and her lack of -- I'm not sure what
7 was going on inside the house because I wasn't in
8 the house. I couldn't see in the house. I didn't
9 look through windows or anything. So I really
10 didn't know. But normally somebody usually
11 answers the door. So her -- her conduct is -- you
12 know, and the fact that you wouldn't just open the
13 door and -- you know, again I would just continue
14 to try to create the dialogue and maybe come up
15 with other ways that I could think of besides
16 identifying myself, providing documentation. And
17 in that instance if she had not maybe called the
18 police, you know, I may have just sat, waited,
19 and, you know, maybe he came home. You know, I --
20 I can't just wrap it up and say, well, I can't do
21 this one.

22 Q. Uh-huh.

23 A. You know, I have to then assess the
24 situation and make some decisions on what I would

1 do. This was a very unusual circumstance that
2 nobody -- somebody's in there and they're refusing
3 to answer the door. In the instances before, it's
4 they're calling the police as I'm walking up the
5 steps and then they show up and it's, here, yeah,
6 you know, what's your business? Who are you?
7 Identify yourself. Oh, here. Okay. All right.
8 Yeah. What can I do for you? Can I help you?
9 And it goes that way.

10 But in this case I would have, you
11 know, just assessed the situation, determined
12 whether I'm going to wait there longer. I mean, I
13 -- I'm on the clock, so I'm not -- I've got to get
14 these solved, so, you know, I would have gave it
15 some time or, you know, sat and thought and maybe
16 he would have showed up, maybe they came out,
17 maybe they left the residence. You know, there's
18 any number of things. I may have went over and
19 maybe talked to a neighbor. I -- there's just a
20 lot of options. I've got a lot of investigative
21 options, but it really didn't get to that point
22 based off what occurred.

23 Q. Uh-huh. Did -- did you tell -- I think
24 we know her name now as Sarah. Sarah, the woman

1 inside the house, that you were going to stay on
2 her porch all day unless she opened the door?

3 A. I said I -- I'm going to have to remain
4 here. What I said was I'm going to stay here.
5 I'm going to be here because I have to resolve
6 this situation.

7 Q. Uh-huh.

8 A. You know, her he's-not-here answer just
9 doesn't make me go away. I -- we've got to do
10 something here. We've got to try to resolve this
11 situation. And if I had to stay in the area and
12 wait to see if Suleiman showed up or -- or I can
13 determine that he didn't live there in some
14 fashion, well, then I do. But it -- it's going to
15 take some time. So I wasn't --

16 Q. Uh-huh.

17 A. Just because she said he's not here
18 doesn't mean I'm leaving. I still have an
19 investigation to conduct.

20 Q. Okay. Did you call her a liar?

21 A. Never. Never.

22 Q. Okay.

23 A. I would never -- I wouldn't do that. I
24 didn't do that. But I would never do that because

1 that is not how you're going to establish a -- a
2 cooperative dialogue by insulting somebody. So,
3 no, I didn't -- I've never done that. It doesn't
4 -- it serves you no purpose.

5 Q. Have you listened to the 9-1-1 call
6 that she made that day?

7 A. Yeah. I -- I listened to that audio
8 yesterday.

9 Q. Okay.

10 A. I can't recall it verbatim. But I did
11 listen to it.

12 Q. I am going to play a portion of it.
13 I'm not -- we're not going to listen to the whole
14 thing.

15 A. Uh-huh.

16 Q. And I'm going to mark that as
17 Exhibit 13. And I'll start it and stop it and
18 just ask you some questions about what you
19 recognize.

20 - - - - -

21 Thereupon, Exhibit 13 is marked for
22 purposes of identification.

23 - - - - -

24 A. Okay.

1 Q. And there's nothing to view on the
2 screen, I don't know why I'm pointing it this way.

3 A. That's okay.

4 Q. It's just sound.

5 A. Okay. Sure.

6 (Audio played.)

7 BY MS. PICKERILL:

8 Q. 3359 Edgebrook Drive, that's the
9 address that you went to?

10 A. Yeah. If that's the address of record,
11 then that's the one. I -- I didn't recall the
12 number at this point in time.

13 Q. Okay.

14 A. But, yeah, that sounds right.
15 Edgebrook for sure. The numbers, yeah.

16 MR. BOND: Can you say where you're
17 starting and stop so I can write it down.

18 MS. PICKERILL: Yes. I have paused it
19 -- I started at the beginning. And I've paused it
20 now at nine seconds. And I'm going to play it
21 also at nine seconds.

22 (Audio played.)

23 BY MS. PICKERILL:

24 Q. Just is that the voice of the woman

1 that you remember inside the house?

2 A. If that's the audio call, yeah, I -- I
3 guess. I mean it sounds different because I'm
4 listening to it on a little laptop computer. But
5 I can say it's very similar, because I was on the
6 porch. I'm in a open environment. I'm going
7 through a door and a wall and all this stuff
8 listening to it. But, yeah, yeah, I would have to
9 agree. I'm not going to disagree that it's not
10 her. It's -- it sounds a little different coming
11 from -- from a little speaker, but I wouldn't --

12 Q. Okay.

13 A. Yeah.

14 Q. Do you remember the conversation that
15 she described just the back and forth?

16 A. There was some back and forth. I don't
17 necessarily agree with what she's saying. She on
18 here seems a little confused as to what she's
19 saying. And I know that some of the things that
20 she's saying on there are absolutely not true.

21 Q. Okay. Has she said anything so far in
22 what I've played that is untrue?

23 A. I think did she not just say something
24 about coming through the door or -- or trying to

1 open the door?

2 MS. PICKERILL: And I'm so sorry, Jon,
3 I paused that at 31 seconds.

4 BY MS. PICKERILL:

5 Q. I'm going to back it up so we can hear
6 it again.

7 A. Yeah. Please do.

8 Q. And just -- any time you hear something
9 that you believe -- that is untrue, let me know
10 because I'd like to know.

11 A. Okay. I didn't know that.

12 Q. I -- I hadn't asked for that yet.
13 That's all right.

14 A. Okay.

15 Q. I've moved it back to 16 seconds. I
16 think that should give us what we're looking for.
17 And I'm going to I play it from here.

18 (Audio played.)

19 A. Okay.

20 Q. I've paused it -- excuse me -- at 23
21 seconds.

22 A. Yes. I said I -- I identified myself
23 -- I had already said I identified who I was and
24 -- and why I was there. What I believe she said

1 to me was when I asked for that name, he's not
2 here. So I -- she did not indicate a
3 relationship.

4 Q. Okay.

5 A. I don't remember her saying any
6 relationship to the person per se. I don't recall
7 that. So I'm just --

8 Q. Okay. So you might not have been aware
9 at the time that it -- she was his wife?

10 A. I may not have been aware, no.

11 Q. Okay.

12 A. Because I don't recall that. I do
13 recall identifying myself. I do recall her saying
14 she's calling the police.

15 Q. Okay. I'm going to start playing it
16 again at 23 seconds where it is paused.

17 (Audio played.)

18 A. Okay.

19 Q. Is that what you were talking about?

20 A. That's what I'm talking about. That's
21 completely false.

22 Q. Okay. Did you ever touch the door
23 handle?

24 A. Never.

1 Q. Okay.

2 A. I had no purpose to do that. I'm --
3 I'm just -- just regular door knock.

4 Q. Knocking?

5 A. Knocking at the door.

6 Q. Okay. In your opinion what would it
7 mean to knock forcefully?

8 A. I mean, I guess if I was pounding on
9 the door with my fist, I'd say that's pretty
10 forcibly. But that's not forcibly. That's a --
11 that to me is that's a knock at the door.

12 Q. Okay.

13 A. That's letting somebody know, hey,
14 there's somebody outside that wants to meet with
15 you. But aggressive, no.

16 Q. Okay. Would you say that's about how
17 hard you were knocking on her door?

18 A. I'm saying that's -- I would consider
19 that -- yeah, I would just say a -- a standard
20 door knock. How you would knock if you are
21 wanting to get somebody's attention on the inside.

22 Q. Okay. I have paused it at 31 seconds
23 after the last clip. And I'm going to pick it up
24 right from there.

1 A. Okay.

2 Q. Again, if you hear anything that you
3 don't agree with or believe is true --

4 A. Okay.

5 Q. -- let me know. And I might stop it to
6 ask some questions, too.

7 A. Okay.

8 (Audio played.)

9 A. That's incorrect.

10 Q. Okay. Did you tell her to open the
11 door because you're law enforcement?

12 A. No. She said I -- what I heard on
13 there was he tried to open the door because he's
14 the police.

15 Q. Okay. I think she made two comments.
16 It's paused right now at 59 seconds. I'm going to
17 back it up just a little bit just to see if I can
18 more clearly understand what's being said.

19 I'm going to start it at 42 seconds.

20 (Audio played.)

21 A. Okay. I heard that.

22 Q. Okay. I -- I can see the confusion.
23 So you certainly -- you're saying you did not try
24 to open the door or touch the --

1 A. I did not try to open --

2 Q. -- doorknob?

3 A. -- the door. I would have said, ma'am,
4 please open the door. I'm a police officer, you
5 know, let me explain the situation to you. You
6 know, I was just trying to further confirm and
7 reiterate to her that there's no -- no reason for
8 concern, that I am a police officer.

9 Q. Okay.

10 A. So -- and I did say can you please open
11 the door? Can you -- and I would have used the
12 word "please."

13 Q. Okay. The word "please" or the word
14 "police"?

15 A. Please. Like, ma'am, please open the
16 door. I'm a police officer. No one's going to
17 jail. I just want to explain why I'm here. You
18 know, please open the door. It's -- you know, I'm
19 a federal agent, you know, I'm just -- just trying
20 to reconfirm. I'm not running away, so --

21 Q. Okay. I'm going to start playing again
22 at 59 seconds where it was last paused.

23 A. Uh-huh.

24 (Audio played.)

1 BY MS. PICKERILL:

2 Q. Okay. Did we hear anything that was
3 untrue in -- in that clip that you noticed?

4 A. No. She described accurately to her
5 best that I was. Other than I -- my
6 interpretation is she didn't see a police car.
7 Not that she didn't see a vehicle I had driven.

8 Q. Okay. And that I think --

9 A. She says I don't see a police --

10 Q. For what it's worth, I think that is
11 what she meant, too.

12 A. She didn't see a marked unit out there.

13 Q. And you mentioned your car was
14 unmarked?

15 A. Yeah. Correct.

16 Q. And you said that the lights were
17 inside of the vehicle, such that you --

18 A. It's not visible.

19 Q. Okay.

20 A. They're visible once you turn them on.
21 It's -- it's for being -- you know, obviously
22 discretion.

23 Q. Okay.

24 A. Hence the reason we dress the way we

1 do.

2 Q. Oh, excuse me.

3 A. Can I -- can I take a pause for a
4 bathroom break?

5 Q. Absolutely we can.

6 A. Thank you.

7 Q. That's a good place to break.

8 THE VIDEOGRAPHER: We -- we are off the
9 record. The time is 11:40.

10 (A short recess is taken.)

11 THE VIDEOGRAPHER: This is the start of
12 media number three. We are back on the record.
13 The time is 11:51.

14 BY MS. PICKERILL:

15 Q. Okay. So before we took a break we
16 were talking about the 9-1-1 call. And just at
17 some point while she was on the phone with 9-1-1,
18 did Sarah tell you that the police were going to
19 be on their way?

20 A. I don't recall if she said they're -- I
21 -- I made the assumption that after she was on the
22 phone and she was again asking me for my
23 identifiers through the window and showing my
24 creds again or showing my creds and talking to

1 her, I assumed they were on their way, which is --
2 was fine with me. I don't recall if she said
3 they're en route. I do recall her saying I'm
4 calling the police. And then we had a dialogue of
5 her relaying that information to the dispatch.

6 Q. Okay. But it was your understanding
7 that the police were en route to the house?

8 A. Yes.

9 Q. Okay. I think in the clip that we had
10 last listened to -- and I don't know if I put this
11 on the record last time -- but I had it paused at
12 1:49 seconds.

13 Sorry. Sarah mentioned that you had
14 showed her your credentials, and you've said that
15 a couple of times.

16 A. Uh-huh.

17 Q. I have some pictures of your
18 credentials, and there's just a couple of
19 different ones. And so I wanted to see which ones
20 you had on you that day. I'm going to mark this
21 as Exhibit 14. And there are five pages of
22 pictures attached.

23 - - - - -

24 Thereupon, Exhibit 14 is marked for

1 purposes of identification.

2 - - - - -

3 A. Sure.

4 Q. Yeah. Just take a look through it.

5 And are all of those some form of your ATF
6 credentials or badge?

7 A. Okay. Some pictures are of my official
8 credentials. Another picture is what is a PIV
9 card, it's a controlled item that is issued to
10 each agent and/or government employee at this
11 point that allows you to access designated areas,
12 come and go from federal buildings without search
13 and to also operate your government issued laptop.

14 Q. Okay.

15 A. That is the ID that is on the lanyard.

16 Q. Okay. And all of these belonged to you
17 as a special agent with the ATF?

18 A. Yes.

19 Q. Okay. So let's start with that first
20 page. Can you tell me what this badge is?

21 A. Well, the first page is not a badge.
22 It's -- it's -- it states my agency, the
23 Department of Justice, my specific agency, my
24 position, my name, and then it also states in the

1 next fold, next compartment of that opened up
2 credential, it shows my photographs, it shows SA
3 standing for special agent, my designation, it has
4 my badge number, and then to the right of that is
5 written -- is my authority.

6 Q. Okay.

7 A. And I'm signed, and then it's signed by
8 the current director at that time.

9 Q. Gotcha.

10 Is -- are these credentials something
11 that you had with you on July 7th, 2020?

12 A. Yes.

13 Q. Is this what you showed Sarah?

14 A. Yes.

15 Q. Okay. Moving onto the second page, is
16 that your badge?

17 A. Yes. That is the badge that is
18 contained within that credential fold.

19 Q. Okay. So all -- what we just looked at
20 on the first page and this badge on the second
21 page are all in the same little billfold, for lack
22 of a better word?

23 A. Correct. Which is -- yeah, that is --
24 all that is together in there.

1 Q. Okay. The third page is what we saw on
2 the first page?

3 A. Repeat of the first page.

4 Q. Okay. Fourth page, is that that access
5 page?

6 A. That's the PIV card, correct.

7 Q. Okay. And is that the same as what we
8 see in the fifth picture, just with a lanyard?

9 A. Correct.

10 Q. Okay. Did you show Sarah anything
11 other than the credentials that we've talked about
12 on the first page?

13 A. No. That's -- I showed her the most
14 important item to validate who I was.

15 Q. Okay. Makes sense.

16 Okay. And so after you had a belief
17 that police were on the way, what did you do while
18 waiting for them to arrive?

19 A. I stood and -- stood and waited for
20 them to arrive. Just stood at the porch, probably
21 maybe off center from the door a little bit, you
22 know, still with my -- still facing the door in
23 the event that she did answer and I could talk to
24 her.

1 Q. Okay.

2 A. But I just stood there and waited.

3 Q. Okay. Did you call local law
4 enforcement or the local ATF branch to let them
5 know what was up, what you were doing out there?

6 A. Well, obviously my supervisor knew that
7 I was out conducting a NICs investigations and I
8 was heading to Columbus. And so my whereabouts
9 were known at the time, as to what I was doing.

10 Q. Okay.

11 A. Did I make a call while standing there,
12 no.

13 Q. Okay. Did you tell anyone at the
14 Columbus branch of ATF that you were there?

15 A. No. We had that question earlier.
16 And, no, there was no reason to. They have their
17 own things that they're doing. It's -- I wouldn't
18 call other divisions and say that I'm going to be
19 out there doing a NICs investigation. It's not
20 required. It's not necessary.

21 Q. Okay. So why did you decide to stay on
22 the porch and not go wait by your car?

23 A. Well, it was -- one, I felt that
24 leaving the area may -- if -- if this resident was

1 concerned as to who I was, leaving, walking, you
2 know, may be interpreted as fleeing. I -- I just
3 wanted to stand there. In the event that she did
4 open the door, I could re -- you know, quell her
5 suspicions or concerns, you know, and that was it.
6 I had -- I had -- I was doing nothing wrong but
7 doing my job. I did everything I was supposed to
8 do in order to identify myself. So I was just
9 going to wait. When the police arrived, wave them
10 over, present my credentials, explain what the --
11 the situation, what my purpose was. And if they
12 wanted to offer assistance, say just explain to
13 her who I am, which is the way it's always been in
14 those similar incidents with less information
15 provided. So that's -- there was no reason to --
16 to leave the porch.

17 Q. Okay.

18 A. It was -- it was where I started out
19 and it's where I think would be the best
20 indication that I had no reason to -- I wasn't
21 doing anything suspect to -- to warrant moving
22 away.

23 Q. Okay. Is that the same reason why you
24 wouldn't have taken your gun and, like, put it on

1 the hood of your car with your badge or anything?

2 A. No agent is going to do that. You're
3 not going to relinquish your firearm or remove it
4 from your person or your credentials. Those are
5 -- you know, those are very secure, protected
6 items, they'll stay with you. That is -- that is
7 in no way, shape or form anything any law
8 enforcement is going to do.

9 Q. Okay. Why did you make the decision to
10 leave your badge in your pocket?

11 A. Well, it's a secure place to keep it.

12 Q. Okay.

13 A. That's where it -- that's where I pull
14 it out from. I display it. I show it to the
15 person. I validate or everything -- and then I
16 put it back away. I have a folder in my hand. I
17 wouldn't consume my hands with multiple things,
18 it's not tactically sound. I do have a firearm,
19 anything could happen. I still haven't talked to
20 this person or established what or if anything is
21 going on inside the house. So I show it as
22 needed. You asked to see my credentials, here.
23 Is that good? Okay. Put it back in my pocket.
24 I've got the folder. And now I still keep a free

1 hand in order to facilitate whatever I may need to
2 do next.

3 Q. Okay.

4 A. So --

5 Q. Why not take your badge out and kind of
6 hold it with your folder, so that it was visible
7 to police when they got there?

8 A. I've never had to do anything like that
9 before.

10 Q. Okay.

11 A. I -- I wouldn't think to do that
12 because it's not something that's ever been
13 necessary. And again it's -- I had the folder in
14 my hand. I secured the credentials out of habit
15 of securing them. It's -- it's a big deal if you
16 lose your creds. It's a big deal if you lose your
17 gun. It's -- you know, that's -- it's not a good
18 thing, so your habit is to secure it. You know,
19 so I, you know, likely would have put it in my
20 pocket because it's a habit to keep that item
21 secure.

22 Q. Okay. And then do you zip the pocket
23 up once it's in there?

24 A. It's a flap. Yeah.

1 Q. Okay.

2 A. Well, it doesn't have a zipper. It's
3 just got a Velcro flap that comes over.

4 Q. Okay. Cool.

5 Is this a good time to break for lunch?

6 MR. BOND: I don't know if it's here
7 quite yet.

8 MS. PICKERILL: Okay.

9 MR. BOND: But if you -- if you want to
10 break, we can.

11 MS. PICKERILL: My next move was going
12 to be to start looking at the video.

13 MR. BOND: So we might as well.

14 MS. PICKERILL: I'm happy to stop in
15 the middle of that, but it might be more
16 cohesive --

17 MR. BOND: Yeah.

18 MS. PICKERILL: -- if we just break
19 now.

20 MR. BOND: Let's take five. And I'll
21 ask what the status is.

22 MS. PICKERILL: Good. Thank you. I
23 appreciate it.

24 THE VIDEOGRAPHER: We are off the

1 record. The time is 12:01.

2 (A short recess is taken.)

3 THE VIDEOGRAPHER: This is the start of
4 media number four. We are back on the record.

5 The time is 1:00.

6 BY MS. PICKERILL:

7 Q. Thank you. Excuse me.

8 I'm going to next play part of the body
9 cam video. I think you mentioned earlier that you
10 had watched it before this deposition?

11 A. That's correct.

12 Q. Okay. Was that the first time you'd
13 watched it?

14 A. It was the first time.

15 Q. Okay.

16 A. Yeah. I mean, it was apparently a
17 necessity. Not that I wanted to, but that was the
18 first time I had ever viewed any of the video
19 footage of anything that had to do with this.

20 Q. Okay. I'm not going to play the entire
21 thing, but there are parts that I want to ask
22 questions of you about and kind of understand your
23 perspective. But if there's a moment where you
24 need to take a break or anything like that, just

1 let me know.

2 A. Okay. Thank you.

3 Q. Just to sort of set the scene, do you
4 remember if it was Officer Fihe, do you remember
5 that he was the first one to arrive?

6 A. I know that to be the case.

7 Q. Okay. And it was just one officer at
8 first?

9 A. As far as I knew.

10 Q. Okay.

11 A. That's what I would believe.

12 Q. If you look quickly at your transcript,
13 it's -- sorry, Exhibit 12. And I'm looking at
14 page 12, which is another backside of a page. In
15 the third box down the last sentence in there you
16 said, "So, I saw the car pull up. I started
17 waving my hand over to me as I turned and started
18 walking towards the middle of the front yard."

19 A. Okay.

20 Q. Is that an accurate statement of how
21 you remember the incident starting?

22 A. Okay. Third block, is that what you're
23 saying? Where --

24 Q. Yes.

1 A. Okay. Third block. I would say it's
2 all, except I don't -- I -- why I recollected
3 walking to the front of the yard, I mean, you
4 know, I'm trying to remember exactly how it is.
5 It's all there -- but upon review of the video, I
6 actually was standing on the porch --

7 Q. Okay.

8 A. -- at the time. So I didn't come off
9 the porch, and -- and as -- as it would say here.
10 I think I was still on the porch according to the
11 video.

12 Q. Okay.

13 A. But everything else seems to be
14 accurate.

15 Q. Okay. And when you were doing this
16 interview with ATF, is that what you remembered,
17 that you had started walking towards the front
18 yard?

19 A. That's what I thought would have been
20 the case.

21 Q. Okay.

22 A. I guess where I was at the time that I
23 -- that there was interaction with the officer I
24 guess I wasn't really the primary focus in what I

1 was thinking about there.

2 Q. Okay.

3 A. It was more or less what I was doing in
4 terms of my actions, not my position or location.

5 Q. Uh-huh.

6 A. Just that I was in front of the
7 residence, which in this case I was actually
8 standing on the porch and not in the front yard.

9 Q. Okay. And so can you tell me sort of
10 as we sit here today what you remember happening
11 when Officer Fihe arrived?

12 A. Well, I did see -- notice the car
13 approaching, the squad car approaching. I done --
14 I did what I've done in numerous times before to
15 aid the officer because -- so that he knows
16 exactly where to focus his attention. So I'm --
17 I'm waving. I wave over like this to -- here,
18 where -- hey, I'm at the address. But it does aid
19 to get the officer's attention when you're
20 arriving, so you can focus on -- instead of trying
21 to look for where the problem is at or what the
22 complaint is, you can focus on it. So I did that.
23 And so I figured I had his attention and then was
24 standing where I was standing to prepare to have a

1 dialogue and present my credentials and state the
2 purpose that I was at the residence.

3 Q. Uh-huh.

4 If -- on the same page of Exhibit 12,
5 if you go down four blocks to your response there,
6 can you tell me if that is an accurate depiction
7 of how you remember this event starting?

8 A. Fourth from the bottom?

9 Q. Yes.

10 A. At the time, I -- I believed that's
11 probably how I was remembering it. Having
12 reviewed the video for the very first time, you
13 know, there's -- there's a few subtle differences
14 than what I made in that statement. But I also
15 had no video to refer to at that time.

16 Q. Uh-huh.

17 A. So the video would be more of an
18 accurate depiction --

19 Q. Okay.

20 A. -- versus this statement, per se. Only
21 for the fact that I was just trying to do this in
22 some kind of memory after the -- after the event.
23 I mean, it was a lot of trauma. So I was just
24 trying to do my best to -- you know, on a phone

1 interview. This wasn't even in person, this was
2 over the phone.

3 Q. Okay. Ope. Sorry.

4 Is it your memory today that Officer
5 Fihe got out of his car with a pistol trained on
6 you?

7 A. He had his pistol out. Absolutely.

8 Q. Okay.

9 A. He had his pistol out. He had not
10 raised it to a pointed position, but he had it out
11 at the ready.

12 Q. Okay. Is it your memory that you
13 immediately told Officer Fihe that your
14 credentials were in your pocket?

15 A. Okay. Where are we referencing? Are
16 we referencing something on the paper here?

17 Q. I don't think -- no. I'm just asking
18 about your memory. I'm sorry.

19 A. I -- I -- yeah, I do recall advising
20 him that I do have credentials in my pocket.

21 Q. Oh. Sorry. And if you'd turn over to
22 page 13. Now I understand what my note was about.

23 A. Is there a question?

24 Q. Okay. Yes. Is it your memory that you

1 immediately told Officer Fihe that your
2 credentials were in your pocket?

3 A. I don't believe that was the first
4 action I took. I think I was given some commands
5 that I attempted to try to follow. I did advise
6 him that my -- that I was an agent. And I advised
7 him that I had -- you know, my credentials are in
8 my pocket. I was saying that. I'm not sure
9 exactly what order that was said, but it was said
10 very much in the beginning of the interaction at
11 some point.

12 Q. Okay.

13 A. Yeah.

14 Q. Yeah. I'm just trying to understand
15 what your memory of the event --

16 A. Yeah.

17 Q. -- of the event is.

18 So I'm going to start playing Officer
19 Fihe's body-worn camera at 5:05. And I'm going to
20 mark it as Deposition Exhibit 15. Sorry. I
21 know --

22 MR. BOND: No, it's okay.

23 MS. PICKERILL: -- it's a small screen.

24 - - - - -

1 Thereupon, Exhibit 15 is marked for
2 purposes of identification.

3 - - - - -

4 (Video played.)

5 THE WITNESS: Yep.

6 BY MS. PICKERILL:

7 Q. I've paused it at 5:14.

8 A. Uh-huh.

9 Q. And just I'm going to pause this at
10 certain times to ask questions. But if there's
11 ever a time that you want to pause it for any
12 reason, just let me know and we can talk about
13 that, too.

14 A. Okay. Does that also -- if there's
15 play back that needs to happen?

16 Q. Yeah. Absolutely.

17 A. Like a -- can you rewind that for a
18 second?

19 Q. Absolutely.

20 A. Okay. I want to make sure it's not
21 just pause and I can't do a rewind.

22 Q. Yes.

23 A. Okay.

24 Q. Yes. If there's something you want to

1 say while the video is playing and I haven't
2 paused it, just let me know. That's not a
3 problem. And we can go back and watch stuff
4 again.

5 A. Okay.

6 Q. I'm going to scoot next to you if
7 that's okay.

8 I'm going to start it at where it was
9 paused.

10 (Video played.)

11 BY MS. PICKERILL:

12 Q. Okay. Do you see yourself on this
13 video?

14 A. Yeah. I'm standing on the -- on the
15 stoop, porch.

16 Q. Okay. And your left hand, is that the
17 folder that you talked about earlier?

18 A. Yeah. It's the file folder --

19 Q. Okay.

20 A. -- with the documents for the
21 retrieval.

22 Q. Okay. Do you remember Officer Fihe
23 telling you to turn around and show your hands?

24 A. I believe -- yeah, I think that's what

1 he did.

2 Q. Okay.

3 A. And that's what I did.

4 Q. What were -- what's going through your
5 mind at that point? Now the officer's -- he's
6 arrived, he's giving commands. What are you
7 thinking at that point?

8 A. Once I followed his initial commands, I
9 turned around and saw the pistol drawn, fear is
10 the first thing that came to mind. A little bit
11 of panic. A little bit of I'm in a quandary here
12 because the officer has his pistol out, which I
13 could not for the life of me understand why he
14 would have it out under these circumstances. And,
15 two, I still have an unresolved issue behind me,
16 so now I'm kind of put in a position where I'm
17 kind of vulnerable on -- from the front and the
18 back, so that's what's going through my mind. I
19 could not for the life of me understand his
20 approach to this situation.

21 Q. Okay. At this point, Officer Fihe does
22 not have his firearm pointed at you; is that
23 right?

24 A. He his has firearm drawn at his side

1 and he has it out and it's displayed. I mean,
2 yes, he does. And he can see that in the video.

3 Q. You're saying that in the video right
4 here he has his firearm pointed at you?

5 A. No. I'm saying you can see in the
6 video as he exits the vehicle he starts -- he
7 draws his firearm out. And you're --

8 Q. Oh, okay. Pardon me.

9 A. When you see him drawing the firearm --
10 you can't see it in the video here because if he
11 had it -- when he goes to pointing it at me, it
12 comes in the camera, the body cam. But it he has
13 it in his hand; it's in his right hand right now.

14 Q. So perhaps you misunderstood my
15 question.

16 A. Okay.

17 Q. My question was at this point he's not
18 pointing his firearm at you?

19 A. At this point, he is not. He has it
20 out.

21 Q. Okay.

22 A. He has it on display.

23 Q. Thank you.

24 And your response was I'm a federal

1 fucking agent; is that right?

2 A. Yes.

3 Q. That's the first thing that you said to
4 the officer?

5 A. Yes.

6 Q. Okay.

7 A. That was after -- after following the
8 initial commands, turning around, showing my
9 hands, seeing the firearm in his hand, that was my
10 initial statement.

11 Q. Okay. Why didn't you tell him that
12 your badge was in your pocket at this point?

13 A. Because I am trying to first identify
14 that I am a federal agent. The normal course of
15 action would be to say I'm a federal agent. Do
16 you have credentials? Yes, I do. They're in my
17 pocket. Can I see them? Yes, you can. That's
18 the normal protocol. And that's the normal --
19 that's the experience that these types of
20 interactions have -- have always went.

21 The -- at what point I turned around
22 and saw his firearm out of its holster in these
23 circumstances became very threatening and alarming
24 to me. And -- and I've had -- like I said, I

1 still have an unresolved situation. This is in my
2 mind one cop talking to another cop who's doing
3 something entirely unnecessary and inappropriate
4 for this type of interaction. And I'm trying to
5 convey to him in an emotional fashion because of
6 the circumstances that I'm a federal fucking
7 agent, like, listen to I'm saying. And then
8 obviously I -- in making references to -- to
9 trying to produce my credentials to corroborate
10 what I'm saying.

11 Q. Have we heard you talk about your
12 credentials so far in the video?

13 A. No. He just got out of the car and I
14 started following the commands. And then I tried
15 to identify myself as an agent.

16 Q. Okay. You talked about the normal
17 course of action being to identify yourself as an
18 agent.

19 A. Uh-huh.

20 Q. Do you feel that it was outside of that
21 normal course of action to say I'm a federal
22 fucking agent?

23 A. Under those circumstances, no. One
24 police officer talking to another police officer,

1 when one police officer is perceived by another
2 police officer to be acting threatening or --
3 towards that officer or unnecessary actions, I
4 don't -- I don't think that's unnecessary. I
5 think it's a very -- probably a very common
6 response by anybody in that situation that has one
7 -- one police officer has a pistol out at the
8 ready against the other officer.

9 Now, he hadn't raised it at that point.
10 He will do that. But to present yourself at that
11 fashion when -- any trained officer, you know, and
12 having been in that situation, I was not
13 presenting any threat. I started following his
14 commands. My hands are up. You can see my hands.
15 I can't -- I'm not making any furtive movements.
16 I have a case file. I'm dressed the way I am.
17 His actions really put me in kind of a state of
18 panic and -- and I'm trying to calm the situation
19 or -- or deescalate it by just trying to get him
20 to follow normal protocol and ask for my
21 credentials, maintain his own personal safety, I
22 get that. But not in this fashion.

23 Q. Uh-huh.

24 A. This was -- this was not the way you do

1 it.

2 Q. So, yeah, like, when -- when one of the
3 sides of the police officers is acting threatening
4 or out of normal, then that kind of changes what
5 -- how you might react to it?

6 A. Well, in this case, it's a pistol out.
7 It's -- it's -- I mean, the pistol is my concern,
8 an accidental discharge, a -- an officer that is,
9 you know, extreme -- becoming extremely aggressive
10 or is -- or is presenting that image in a --
11 toward a person, you know, in this case another
12 law enforcement agent, which you believed, I
13 believed I should say that everything that I could
14 have done up to that point to identify myself was
15 provided to the agency. That to be greeted in
16 that fashion after providing that -- all my
17 identifiers and then having reasonable means to
18 confirm who I was would not have justified an
19 approach that was made by the officer in that
20 fashion. And that's what I was perceiving at the
21 time when I see a firearm out from another
22 officer.

23 I'm -- I'm saying who I am in a very
24 fearful and startled and shocking way. And if --

1 if the profanity obviously came out with it, it
2 wasn't meant with disrespect. It was said as a --
3 as a part of the emphasis of let me -- I am who I
4 am. I'm a federal fucking agent is what I said
5 because I was, you know, in that state of mind
6 based on what I'm perceiving in front of me.

7 Q. Uh-huh.

8 We had talked a couple of times about
9 the -- the file folder that's in your hand.

10 A. Uh-huh.

11 Q. Would that have been your entire case
12 file for this particular run?

13 A. That would have been all the
14 documentation that was not in an electronic form
15 that would have been necessary to confirm to the
16 recipient or that I would need for investigative
17 purposes for reference when conducting an
18 interview to prove that they are in fact
19 prohibited.

20 Q. Uh-huh.

21 A. It's not to say there's not another
22 piece of paper or something that might have been
23 on my desk or something. But it was -- it may be
24 related, but it was not pertinent to what I was

1 there for.

2 Q. Uh-huh.

3 A. Those documents would have been in that
4 folder.

5 Q. I think you talked about later on in
6 the video an OHLEG printout that's in the folder?

7 A. Yes.

8 Q. Do you remember if there was anything
9 else in the folder?

10 A. Yes.

11 Q. If you don't --

12 A. There would have been other items in
13 the folder.

14 Q. Okay.

15 A. Absolutely. Because I would have been
16 presenting those documents to or if asked used
17 them to explain my purpose to the resident.

18 Q. Okay. Do you remember what documents
19 were in the folder?

20 A. There might have been -- there was
21 probably the initial Brady referral report of the
22 FBI finding. There may -- there was the OHLEG
23 documents. There -- there wasn't a lot on his
24 criminal history.

1 Q. Uh-huh.

2 A. And the documentation for ICE's
3 confirmation and his immigration number and that
4 would have been in the electronic file. So was
5 there a substantial -- there was no -- there
6 wasn't an abundance of documents, but there was
7 necessary documents that only an ATF agent would
8 have law enforcement at a minimum. But the Brady
9 operation branch report, that would -- that's ATF
10 exclusive material. The OHLEG, any Ohio law
11 enforcement agency is going to have OHLEG
12 material.

13 Q. Uh-huh.

14 A. So there was documents. I can't say
15 everything that was in there. But those two items
16 I know would have been in there.

17 Q. Yeah. And just to be clear, at any
18 point if there's stuff you're not allowed to talk
19 about, I don't want you to get into that.

20 A. Yeah. No. It's just --

21 Q. Just to the extent that you can.

22 All right. I'm going to start the
23 video where it was paused last, which is five
24 minutes and 20 seconds.

1 (Video played.)

2 BY MS. PICKERILL:

3 Q. Okay. Do you recall the commands that
4 Officer Fihe gave you to get on the ground?

5 A. I recall first and foremost that he
6 asked for my ID, which is I thought the start of
7 the logical sequence; although, I didn't see the
8 purpose for the firearm which alarmed me at first
9 and -- and created a -- you know, my initial fear
10 which I didn't think would have happened because I
11 didn't think the situation was going to -- I was
12 going to be confronted like that.

13 But initially he asked for the ID, as
14 he's pointing the firearm at me. So it -- the
15 whole thing is starting to move away from what the
16 logical sequence would have been. Let me see some
17 ID. Okay. It's in my left pocket. Can I get it
18 out? Yes, get your -- let me see your ID. Boom,
19 boom, boom. Here it is. And then, you know,
20 whatever he would -- however means he wanted to
21 retrieve it, bring it to me, lay it on the porch,
22 step away, I don't know how he would want to do
23 it. But he never stayed on that course. He went
24 a totally different direction, which now put me in

1 a -- you know, an additional position of
2 vulnerability.

3 Q. What -- did you understand what Officer
4 Fihe meant when he gave the command to get on the
5 ground?

6 A. Yeah. I know what he meant.

7 Q. Okay. Why didn't you get on the ground
8 when he started giving those commands?

9 A. Well, too, the logical safe place for
10 me when I have another law enforcement or a person
11 with that level of aggression pointing a loaded
12 firearm at me is to keep my hands visible and --
13 and not make any moves. So I'm -- so I'm
14 perceiving it as -- for my personal safety. And I
15 still have my -- I'm still there in an official
16 capacity. I still have an unknown situation now
17 put behind me instead of in front of me. So I am
18 -- so I'm trying to manage my personal safety,
19 obviously any safety of the public, and I
20 certainly don't want to create a situation that is
21 going to cause him to discharge that firearm,
22 whether it be intentionally or unintentionally.
23 And I know that can be the case, I've seen it
24 happen many times in training.

1 So there's a lot going through my head
2 at that time and standing there still or not
3 getting on the ground to me is the safest place to
4 be in that moment and the most tactically sound.

5 Q. Okay. So at this point you have walked
6 down off the porch?

7 A. I came off the porch, yes.

8 Q. Did you think that when Officer Fihe
9 told you to get on the ground that the safest
10 option was to walk closer to him?

11 A. No. I didn't walk closer to him. I'm
12 not seeing that. I'm seeing I'm standing in the
13 clearest place I can be with the most light and
14 visibility on myself and keeping my hands visible.

15 Q. Okay.

16 A. And any law enforcement officer knows
17 the hands are the threat. That's -- that's the
18 threat. It's not the feet. It's not anything
19 else. The hands are -- are what the threat is
20 whether what it's -- what's in the hands or what
21 the hands can do, draw from -- you know, a weapon
22 or something. So I was giving him in my
23 experience the best presentation of myself, at the
24 same time trying to preserve myself from being

1 shot and still not trying to put myself in a more
2 vulnerable position such that whatever is going on
3 behind that door, if it was to turn bad, I'm even
4 more vulnerable or even Officer Fihe more
5 vulnerable to it. So I -- so I'm making a lot of,
6 like, quick assessment here.

7 Because again this is a split second
8 situation when I'm confronted with an armed
9 officer pointing a pistol at me shouting
10 aggressively, essentially treating me as some type
11 of suspect or as if I was in the middle of
12 committing a crime, which I had no reason to
13 believe that he would think that based on the fact
14 that I had provided all my identifiers not only to
15 the resident, and I know that that was relayed to
16 the police department. So I'm trying to make a
17 lot of calculated decisions and that and I -- I
18 did the best to try to, you know, first and
19 foremost not get shot. And that was the safest
20 place to be is standing up with my hands visible.

21 Q. So when Officer Fihe told you to get on
22 the ground, you felt that the safest option was to
23 walk forward and stay standing with your arms out?

24 A. My safest option was to put myself not

1 any closer to him, but actually put myself in a
2 more visible fashion. I go from a shadowed porch
3 out to broad daylight right in the middle where I
4 am not only visible to him, but I may be visible
5 to other people that are surrounded in the area
6 that may be observing. In the event that I'm
7 unintentionally shot or intentionally shot, I want
8 it to be very clear that I am not a threat to that
9 officer and that is where I tried to position
10 myself. In no way, shape or form did I make any
11 advancements to him.

12 Q. Just to be clear, my question was that
13 you walked forward, would you agree? You walked
14 forward off the porch?

15 A. I came off the porch.

16 Q. Okay.

17 A. I wasn't walking towards him.

18 Q. Okay.

19 A. I wasn't aggressing him.

20 Q. Sorry. I tried to change that
21 language, but I understand where it was confusing.

22 A. Okay. Thank you.

23 Q. Why -- you said a couple times that the
24 hands are the threat. Why didn't you drop the

1 folder when he asked to see your hands?

2 A. Well, he had visi -- visibility of my
3 hands when I was turned this way and then when I
4 turned with him. It's very clear that I'm not
5 holding a weapon. I have the folder. I wasn't
6 dropping anything. I wasn't grabbing anything. I
7 wasn't trying to reach for anything. I was just
8 trying to keep exactly the way I was, but not on
9 the porch, but out in more visible and, you know,
10 I'm waiting for let me see your credentials, let
11 me see your credentials. Because that's the next
12 logical step in this -- in this situation.

13 Q. Sorry. I'm not sure if I mentioned it
14 before. I'm just going to say it now.

15 A. Uh-huh.

16 Q. I have it paused at five minutes and 29
17 seconds.

18 At this point, have we heard you say
19 where your badge or credentials are?

20 A. I don't know that we've said that right
21 at -- I don't think we've reached that point.

22 Q. Okay. I'm going to ask you a question
23 about Exhibit No. 9, which is that ATF questions
24 that they answered. It's that one.

1 A. Uh-huh.

2 Q. And I'm looking at question number 45.
3 It goes from page 13 to 14.

4 A. Okay.

5 Q. All right. And so ATF says on page 14,
6 "Currently agents are taught to identify
7 themselves and to follow the commands of
8 responding local law enforcement."

9 A. Uh-huh.

10 Q. Were you -- were you trained to follow
11 the commands of responding local law enforcement
12 while you were working as a special agent?

13 A. Yes. It's a general -- general
14 response and it has a general application;
15 however, the -- the situation -- it's situation
16 specific. And if you're -- if you feel that your
17 safety is at risk, then you're not obligated to
18 follow that command.

19 And again I believe this -- this is a
20 general contact, but not under these specific
21 circumstances. So if you're -- if you have a
22 threat to your life or a perceived threat or fear
23 of being, you know, injured or -- or killed,
24 you're not obligated to follow commands that are

1 going to jeopardize -- possibly jeopardize your
2 safety further.

3 In general, of course you want to
4 cooperate and that. And by all means I was
5 attempting to cooperate by identifying myself.
6 That wasn't obviously good enough in this
7 situation for this officer when all the
8 opportunity was there. So -- and generally
9 speaking, of course, and I'm sure they're taught
10 to cooperate with federal law enforcement. But
11 this is -- this is a -- generally, yes. It's a
12 general statement, but there's exceptions. And
13 when your personal safety is at risk, you -- you
14 take the -- the decision to preserve that over
15 following a command, if you feel like it's a
16 better way to remain safe. And in this case,
17 that's what -- that's what I was perceiving.

18 Q. Okay. I am going to start playing the
19 video from where it was last paused at five
20 minutes and 29 seconds.

21 (Video played.)

22 BY MS. PICKERILL:

23 Q. Okay. I've paused it at five minutes
24 and 48 seconds.

1 A. Uh-huh.

2 Q. A couple of times in there did you tell
3 Officer Fihe that you wouldn't be getting on the
4 ground?

5 A. I -- can you replay it?

6 Q. Yeah. Absolutely.

7 A. I was focused on something else.

8 Q. That's okay.

9 It goes back in 10 second intervals.

10 A. Okay. Yeah. That's fine.

11 Q. I'm going to start playing it at 5:28.

12 A. Thank you.

13 (Video played.)

14 A. Okay.

15 Q. I've paused it at 5:38.

16 A. Yeah. Now, what was the question?

17 Q. Do you remember telling Officer Fihe
18 that you wouldn't get on the ground?

19 A. I remember -- by review of the video, I
20 -- I heard myself say that once, I'm not getting
21 on the ground.

22 Q. Okay. Why would you have told
23 Officer Fihe that you weren't going to comply with
24 the commands he was giving?

1 A. Because that was not in my -- in my
2 perception of the situation an -- the -- his
3 presentation of the weapon having pointing --
4 pointing a live firearm at me, moving to the
5 ground and making any type of movements other than
6 standing in place was -- was going to jeopardize
7 my safety. He wasn't calm, cool and collected,
8 and I know where that leads when -- when an
9 officer is -- is -- his emotions are getting the
10 best of him and he's got the firearm in the hand.
11 Because I've trained officers, I've trained
12 agents, I see how accidents happen with a firearm
13 where there's an unintentional discharges. And
14 frankly my personal safety was paramount there.
15 And there wasn't -- there wasn't a necessity for
16 me to jeopardize that when I could have simply
17 presented the credentials in -- in a calm fashion
18 to him, and had him review those in any way he
19 chose to, and it -- by just presenting them. So
20 -- and tactically, it wasn't -- it was -- it would
21 have been a terrible decision for me tactically
22 because I still have the unknowns behind me. And
23 with that, I -- I was thinking that, okay, he --
24 he's calling for assistance. The next officer

1 that arrived might be the officer that actually
2 sees and -- and understands the steps to take here
3 in order to deescalate the situation. I was no
4 threat. And I assumed that that officer would
5 likely if there was a second officer responding
6 would say just put -- put your pistol down for a
7 -- do you have credentials? Yes, I do. They're
8 in my pocket. I was -- I'm trying to get to that
9 point; he's not letting me. Can I please see the
10 credentials? Yes. Can you carefully remove them?
11 Yes. That's what I was hoping at this point would
12 logically take place. But in the meantime, the
13 safest place and the most tactically sound place
14 for me is to stand there with my hands up, and
15 that's the choice I made.

16 Q. Okay.

17 A. Because of those reasons.

18 Q. So was it -- was part of your decision
19 to not get on the ground because you wanted to
20 wait for that second officer to get there to see
21 what would happen?

22 A. Well, first and foremost, it was not
23 safe for me. I did not want to make any movements
24 with a trained firearm on me. I just didn't want

1 to. I -- you know, I've got a wife, I've got a
2 baby, all of these things going in your head.
3 Because a situation that I'm being confronted with
4 is not a situation that I've ever personally been
5 in. I've never had another experience that I
6 expect to be offering me assistance to treat me in
7 that fashion and point a loaded firearm at me. So
8 there's a lot to digest in that moment, and my
9 personal safety superseded everything. And that's
10 why I chose to stay stand. These other rationale
11 and reasonings are in my head, too. They're all
12 going on. I'm trying to make the best decisions I
13 can and not end up dead. And I was hoping in
14 addition to just remaining there if he pulled the
15 trigger, there's going to be witnesses, he shot an
16 unarmed person. If the other -- if another
17 officer opens up or another officer arrives, he'll
18 do the right thing, he'll take the logical
19 sequence, he'll ask for my credentials. Those are
20 the -- and -- and I'm remaining at least in a
21 tactical position where if I had to respond to
22 aggression behind me for some reason, I can -- I
23 can also protect myself in that fashion. Standing
24 was by far the safest place for everybody under

1 these circumstances.

2 Q. You did have on this day a pistol on
3 your right hip, correct?

4 A. Yeah. I -- yeah, with my shirt, yeah,
5 like --

6 Q. Okay.

7 A. -- I would do on standard apparel,
8 attire, equipment, I would carry on this, yes,
9 absolutely.

10 Q. Just wanted to be clear.

11 I am going to start playing this from
12 where it was last paused, which is at 5:38.

13 A. Uh-huh.

14 (Video played.)

15 BY MS. PICKERILL:

16 Q. In that bit, Officer Fihe told you to
17 -- to stay where you are. Do you remember that
18 happening?

19 A. Well, he's saying it, yeah, I -- I mean
20 if it's on the video, it happened. I can't say
21 that I recall every utterance. But, yeah, I see
22 it, so he would have said that, yeah.

23 Q. Okay. And you told him that you would?

24 A. Okay. Yeah. I --

1 Q. Is that --

2 A. I'm hearing it on the video and seeing
3 it, yes.

4 Q. Okay. I have paused it at 5:56, and
5 I'm going to start playing it from the same place.

6 (Video played.)

7 BY MS. PICKERILL:

8 Q. Do you now know that the officers were
9 dispatched -- oh, I'm so sorry. I have this
10 paused at six minutes and 15 seconds.

11 Mr. Burk, do you know now -- I'm
12 certainly not asking about what you knew at the
13 time. Do you know now that the officers were
14 dispatched to what was labeled a burglary in
15 progress?

16 A. I believe -- I believe that now that
17 was their -- the initial dispatch -- excuse me,
18 dispatch that they got --

19 Q. Okay.

20 A. -- initially.

21 Q. And did you kind of hear in the video
22 where Officer Fihe explained or -- or said to you
23 we got a call that someone was impersonating a
24 police officer?

1 A. I heard that. And I heard that didn't
2 have any credentials. So there was a mention in
3 there that I was impersonating an officer and
4 didn't have any credentials.

5 Q. Okay. So at the time -- at this point,
6 did you have sort of an understanding of why the
7 police officers were there?

8 A. Well, I -- I knew the police officer --
9 a police officer would be responding. I knew that
10 she was calling the police. I knew that she was
11 not sure if I was a federal agent or not. I've
12 been there several times before in that same type
13 of scenarios. So I knew he was -- there was going
14 to be a police response, and I -- I welcomed it
15 because I assumed I'd show my credentials and, you
16 know, create a dialogue and we would state my
17 purposes. And if he wanted to assist, great. If
18 not, I didn't need it. That's fine, too.

19 And so I knew that there was a
20 response. Now, up until now, I didn't know what
21 exactly was said on the phone to the dispatch and
22 what they had put out. I learned that after the
23 fact.

24 Q. Uh-huh. Okay. I am going to start

1 playing the video again starting at six minutes
2 and 15 seconds.

3 (Video played.)

4 BY MS. PICKERILL:

5 Q. I've paused it at six minutes and 31
6 seconds.

7 A. Uh-huh.

8 Q. Were you at this point pointing to your
9 pocket to show where your credentials are?

10 A. I was just trying to make reference
11 that they're in my left pocket.

12 Q. Okay.

13 A. Just with -- at the same time keeping
14 my hands where you can see them, but at least
15 trying to zone him in on where to look for these
16 credentials.

17 Q. Okay. And that was your left pocket,
18 right?

19 A. Always.

20 Q. Okay. And to be clear, your gun was on
21 your right hip?

22 A. Always.

23 Q. Okay. Right now that folder, it's in
24 your right hand. You -- I don't know if you -- do

1 you remember watching in the video you just
2 switched the folder from your left hand to your
3 right had?

4 A. I likely did under the circumstances.
5 Yeah, I'm now dealing with law enforcement.

6 Q. Okay. That would explain how it got
7 into your right hand.

8 A. Right. Yeah. I mean, there's a lot
9 going on in -- in that moment there, you know, I'm
10 -- the folder.

11 Q. Uh-huh.

12 A. You know, I'm trying to convince him
13 that who I am and allow this procedure for me to
14 identify myself appropriately. And, you know, so,
15 yeah, I obviously shifted the folder over to that
16 hand because my credentials are in my left pocket.
17 I really want him to know where to look for these.
18 And, you know, reaching across, probably not a
19 good idea, so I switch hands and I'm, like, right
20 here.

21 Q. Yeah. It kind of looks like --

22 A. So it's just to aid me in referencing
23 him I -- where he can find things if he would just
24 stop and look.

1 Q. That makes sense.

2 I'm going to start playing it where it
3 is paused at 6:31.

4 A. Uh-huh.

5 (Video played.)

6 A. See. I switched it back to my left
7 hand.

8 Q. Okay. I've paused it at six minutes
9 and 38 seconds.

10 Did you kind of hear the other officer
11 yelling?

12 A. I -- yeah, he just got there and
13 he's --

14 Q. Okay.

15 A. -- going down the same path that Fihe
16 was in terms of his actions, yes.

17 Q. Okay. That was my only question.

18 I'm going to start playing it at 6:38
19 where it's paused.

20 A. Uh-huh.

21 (Video played.)

22 BY MS. PICKERILL:

23 Q. Did you hear Officer Winchell say face
24 down?

1 A. Yeah. I'm hearing face down, get down.

2 I mean, I'm --

3 Q. Okay.

4 A. I'm processing under duress and stress
5 while still keeping in mind I'm there doing my
6 job. Multiple commands at that time, yes.

7 Q. Okay.

8 A. And I do hear it on the video.

9 Q. So Officer Winchell comes in and he
10 starts giving you the same commands to do the same
11 stuff that Officer Fihe was doing?

12 A. With his -- with his firearm out as
13 well.

14 Q. Okay. I am going -- it is paused -- I
15 paused it at six minutes 42 seconds. I'm going to
16 start playing from the same place.

17 (Video played.)

18 BY MS. PICKERILL:

19 Q. I've paused it at six minutes and 52
20 seconds.

21 A. Uh-huh.

22 Q. A couple of things happen. You
23 mentioned to the officers in that clip that your
24 credentials are in your left pocket.

1 A. Uh-huh.

2 Q. Is that a yes? I'm so sorry, just for
3 the court reporter.

4 A. Oh, yes. Yeah. I was probably trying
5 to guide them to that same pocket that I was
6 trying to indicate when I was standing.

7 Q. Okay. Sorry. The -- it's just harder
8 to type out --

9 A. Totally understand. Yeah.

10 Q. -- sounds.

11 And did you see that Officer Fihe
12 lowered his firearm so it's not pointed anymore?

13 A. Can you replay it? Because --

14 Q. Yeah. Absolutely. I'm going to go
15 back 10 seconds to six minutes and 42 seconds.

16 (Video played.)

17 BY MS. PICKERILL:

18 Q. Okay. So at this point, you're on the
19 ground?

20 A. Yes.

21 Q. Okay. Officer Winchell is using both
22 of his hands to try and grab your arm; is that
23 right?

24 A. Appears so in the video, yes.

1 Q. Okay. So his gun is not in either of
2 his hands?

3 A. Not that I could see on this video. I
4 don't -- I don't see it there.

5 Q. Okay.

6 A. He -- he must have holstered it, I'm
7 guessing.

8 Q. Okay. Did you hear Officer Fihe say
9 we're going to put your arm behind your back?

10 A. Just now?

11 Q. Yeah.

12 A. I -- replay it again then. I'm --

13 Q. Yeah. Absolutely.

14 A. I'm probably focusing on something else
15 in the video and not hearing it.

16 Q. No problem.

17 A. So let me try to slow my process down
18 here a little bit.

19 Q. I'm going to start it at 6:44.

20 (Video played.)

21 A. Okay. I heard it.

22 Q. Okay. You heard him say --

23 A. Yeah. We're going put your arm behind
24 your back.

1 Q. And then did you hear yourself say wait
2 a second?

3 A. Yes.

4 Q. I have it paused at six minutes and 54
5 seconds. What were you trying to communicate when
6 you told them to wait a second?

7 A. I was continuing to try to deescalate
8 the situation. What they were doing in my mind
9 was completely unnecessary, to the point that
10 they're now having me on the ground and trying to
11 forcibly cuff me. Wait a second is, like, pause,
12 guys. Pause here for a minute. Let's -- you
13 know, I'm trying to calm the situation. But and
14 -- and be the voice of reason here. I'm like all
15 that had to happen there, if it even needed -- if
16 -- since it got to this point is I'm -- I'm in a
17 -- I'm in a submitted position on the ground. You
18 have a gun. Hold your gun. If you want to point
19 it at me, if that's what you're going to do, then
20 have one person retrieve my credentials. Oh, here
21 they are. Oh, you know, great, you know, and then
22 redirect the dialogue to let's try to fix this
23 situation, not continue the aggression. I have
24 two officers now trying to -- to climb on top of

1 me and one pull this one, one do this and I'm like
2 wait a minute. Wait a second. Wait a second,
3 guys. This is -- this is not necessary.

4 So I'm trying to deescalate the
5 situation. And it's -- it's, you know, I'm
6 scared, I'm -- you know, I -- I know where this is
7 leading with their actions. They're going to --
8 you know, they're really just going down the path
9 of treating me really aggressively as if I'm a
10 suspect or I -- I was in the middle -- in the
11 middle of committing a crime in front of them or
12 something, and I'm trying to put pause on the
13 situation. I'm trying to put pause to it is what
14 wait a second means.

15 Q. You said that you were in I think you
16 said was a submissive position, is that --

17 A. I'm face down on the ground.

18 Q. With your arms out sort of on --

19 A. I'm belly down, face on the ground, my
20 hands are visible. That's pretty much a -- a
21 submitted position. I mean, law enforcement has
22 people in that all the time when they're in any
23 type of custody. A lot of times, they just have
24 them sit down. Keep your hands on your head, sit

1 on the curb. There's -- there's a multitude of
2 ways to control somebody, keep your own personal
3 safety, conduct an investigation without cuffing
4 somebody or having to forcibly cuff them, drag
5 them around, force them, stuff them in a squad
6 car.

7 You have two officers there now. One
8 person can create a dialogue, the other person can
9 just watch me, make sure I don't do anything.
10 Stay still. Let us get your credentials out.
11 Okay. They're in my left pocket. But that's not
12 what they wanted to do. And I continued to try to
13 be the voice of reason. Please look at my
14 credentials. I'm a federal agent. And -- and
15 that is what we're seeing here in this video.

16 Q. So are you trying to sort of keep the
17 situation from going to a handcuffing route to
18 sort of stay at this submitted position point?

19 A. I'm trying to not let this situation
20 escalate any more. My logical thought, if I --
21 you know, in that moment is that, yeah, they're --
22 they're hell bent on putting cuffs on me.

23 Again, I'm already in a tactically
24 unsound position. They have no regard for even

1 why I'm there, what the potential threat is. So
2 being in handcuffs just further puts me in a
3 tactical disadvantage. A dialogue would have
4 brought them into the loop as to why I was there.
5 Help them understand a little bit about what's
6 going on in the house so that maybe they could
7 have had a dialogue at the same time, kept an eye
8 on the house because there is a firearm believed
9 to be pro -- by a prohibited person that hasn't
10 been resolved yet.

11 So I'm trying to -- trying to maintain
12 some sensibility about a very, very un -- unsafe
13 situation, especially for myself. But, you know,
14 also for everybody that's there. I mean, there's
15 just all these things are driving through your
16 head at the same time you're trying to not end up
17 in handcuffs in the back of a car for no reason
18 that you -- it just didn't need to be that way.
19 So, you know, that's -- you know, that's the way
20 I'm perceiving this in this moment is I don't
21 understand why they're doing what they're doing.
22 It's -- I still don't understand why they went
23 this route.

24 Q. So once you're on the ground and you

1 kind of realize that, you know, they're doing what
2 they're doing and they're wanting to go the
3 handcuffing route, did you put your hands behind
4 your back?

5 A. I was certainly not resisting their
6 efforts. I've got two officers trying or
7 attempting to do what is -- as far as our training
8 and experience is done by one officer when you
9 have two officers present. One officer is the
10 cover present. He's the officer that makes sure
11 if -- if deadly force is needed, he is the
12 position -- in the position to deploy that or
13 protect around your surroundings in case there's a
14 threat that's coming from an external area. I've
15 got two officers grabbing and pulling at me at the
16 same time and -- and this video at times working
17 in opposition of each other.

18 And as it proceeds, you'll see, they
19 climb on top of me. You know, I'm -- I'm not a,
20 you know, overly flexible person, so I'm doing the
21 best I can in that moment to navigate really poor
22 tactics by these officers that is -- is really not
23 the way you would go about this if -- if officer
24 safety was truly what you were concerned about,

1 because it only takes one -- one person to
2 handcuff somebody. And if you're calm and you
3 just explain, hey, this -- bring your hand back.
4 This -- but it's -- it's high order with these
5 guys, and that doesn't make it easy for -- for
6 anything that I'm -- I'm doing when I'm on the
7 ground to -- to -- to work with that.

8 Q. My question was a lot simpler than
9 that. My question was just did you put your hands
10 behind your back?

11 A. I did the best I could do. I -- I
12 mean, did I -- was I able to get them all the way
13 back? No. I was attempting to cooperate the best
14 I could. But I've got forces going on there that
15 are not allowing me to easily do that. They're
16 fighting to gain my -- to institute compliance
17 when it really wasn't necessary. So I -- it's not
18 one person. You've got one person trying to bend
19 one arm and you've got the other person trying to
20 bend another arm.

21 Q. Uh-huh.

22 A. It's not an easy situation to be on the
23 recipient of. So I could -- I could have put my
24 hands behind my back while I was standing or

1 kneeling by just verbal commands, if that's what
2 you wanted to do. But in this case, it's the --
3 it's the pile on approach. And it didn't need to
4 be that way. So I, you know, could not
5 necessarily get my hands behind my back in an easy
6 fashion with that approach.

7 Q. I believe you've said before that while
8 the officers were trying to handcuff you, you were
9 telling them not to; is that an accurate
10 statement?

11 A. I was -- I was trying to get them to
12 pause their actions and -- and still attempting to
13 establish a -- a logical dialogue here from one
14 cop to another cop that their actions are -- are
15 not warranted and -- and to try to get them to
16 divert to something more reasonable like just
17 retrieve my credentials. Just look at them. Ask
18 me what office I'm at. Ask me who my
19 supervisor -- ask me my phone number. Like,
20 investigate. Be an officer on-scene
21 investigation. Not, you know, on-scene bouncers.
22 I -- I just -- that's what I'm trying to do. And
23 I'm trying to cooperate at the same time. I'm
24 trying to not let this become more of a situation

1 where I'm now cuffed, confined, I'm trying to get
2 them to pause their actions, but I'm not actively
3 resisting by any means.

4 Q. I am going to start playing this again
5 from where it's paused at six minutes and 54
6 seconds.

7 (Video played.)

8 BY MS. PICKERILL:

9 Q. I have it paused at seven minutes and
10 two seconds.

11 A. Uh-huh.

12 Q. Did you see where your left arm was at
13 the small of your back and then it moved to kind
14 of be down on the cement next to your chest?

15 A. I saw my arm move, yeah, in the video,
16 yes.

17 Q. Okay. Do you remember what happened
18 there?

19 A. Looking at the video, it looks as
20 though he was trying to pull my arm one way and
21 lost control of my arm or -- or it slipped and
22 then my arm obviously came back instinctually. I
23 probably put it on the ground, so that's what I
24 would have suspected happened. It wasn't as

1 though I was fighting them. It's -- I believe he
2 lost his grip. Again I've got two aggressors, you
3 know, acting -- you know, trying to do the same --
4 same task in opposite directions. So it looked as
5 though his hand slipped, my arm -- obviously, if
6 he had -- you know, was pulling it back, it
7 slipped, it probably went to the ground just to,
8 you know, instinctually, you know, just where else
9 is it going to go?

10 Q. Uh-huh.

11 A. So I probably just placed it back on
12 the ground. And then again I'm continuing to try
13 to get these guys to slow their role and -- and
14 talk to me and just pause the whole cuffing thing
15 because it wasn't warranted. I'm -- I'm trying to
16 do my job is what I'm trying to convey. I'm in
17 the middle of -- this isn't a bar where there was
18 a disturbance and I'm just Joe Citizen. I'm --
19 I'm at a -- on an active investigation in the
20 middle of it and here's where I'm at right now and
21 I'm not being allowed to properly identify myself.
22 And this is where it's going. And of course I'm
23 trying to -- to get this thing to take a pause at
24 any chance I could try to reason with these guys,

1 and it's just not happening.

2 Q. I'm going to start playing the video
3 again starting at seven minutes and two seconds
4 where it was last paused.

5 (Video played.)

6 THE WITNESS: Can I take a break for a
7 just minutes --

8 MS. PICKERILL: Of course.

9 THE WITNESS: -- if you don't mind? I
10 just want to use the restroom.

11 MS. PICKERILL: Yep.

12 THE VIDEOGRAPHER: We are off the
13 record. The time is 1:55.

14 MS. PICKERILL: And for the record, I
15 have stopped the video at seven minutes and 29
16 seconds.

17 (A short recess is taken.)

18 THE VIDEOGRAPHER: This is the start of
19 media number five. We are back on the record.
20 The time is 2:01.

21 BY MS. PICKERILL:

22 Q. Thank you.

23 Okay. Mr. Burk, I'm sorry about --
24 about this. I had paused the video at seven

1 minutes and 29 seconds. And I want to watch just
2 about another 15 seconds of the video. So I'm
3 going to start playing it from that point.

4 (Video played.)

5 BY MS. PICKERILL:

6 Q. Okay. I've paused it at seven minutes
7 and 35 seconds. Did you hear in the video
8 Officer Fihe saying he's going to get his Taser
9 out?

10 A. Yes.

11 Q. Okay. Do you remember hearing that on
12 the day, do you remember being aware that his plan
13 was to use a Taser next?

14 A. I -- I -- I don't know if I remembered
15 it that day or in that moment or that was going
16 through my mind. I -- I would like to think that
17 I probably did, only for the fact that I was
18 trying my best to stay, like, calm the best I
19 could so that I could still try to deescalate the
20 situation. So I -- so I may have heard it that
21 day. I can't say now whether I did it that day or
22 not.

23 Q. Okay.

24 A. But he obviously said it because it's

1 on the video.

2 Q. Okay. Yeah. And that's helpful. What
3 I'm really -- I'm asking for is if you have an
4 independent memory of it? And so that answers my
5 question.

6 A. Well, I know he did because I -- you
7 know, I mean, there was, you know, injuries and
8 marks left because of it. So after the fact, I
9 know that he did. But in that exact moment, I
10 mean, I'm getting -- there's a lot going on there,
11 so I don't know if I'm hearing it clearly.

12 Q. Uh-huh.

13 A. I don't know exactly --

14 Q. Sure.

15 A. -- to what extent I heard him saying
16 it.

17 Q. Okay. It's paused at 7:35. I'm going
18 to start from there.

19 (Video played.)

20 BY MS. PICKERILL:

21 Q. Okay. I've paused it at seven minutes
22 and 55 seconds. After the Taser is deployed, do
23 they put handcuffs on both of your wrists?

24 A. I'm eventually, yeah, cuffed after the

1 tasing part.

2 Q. Okay.

3 A. That's the sequence of it, yeah.

4 Q. Okay. Here, I'll -- it's paused at
5 7:55. I'll play it just for a more seconds.

6 (Video played.)

7 BY MS. PICKERILL:

8 Q. I've paused it at seven minutes and 59
9 seconds. At this point in the video, are you
10 handcuffed?

11 A. It looks like they -- the cuffs are --

12 Q. Okay.

13 A. -- both -- on both wrists at this
14 point, yes.

15 Q. And at this point, do they use the
16 Taser anymore?

17 A. Not after I'm cuffed, they -- they
18 don't.

19 Q. Okay.

20 A. It was -- there was during -- during it
21 and I don't know if it shows -- if you could
22 determine it from the video, but the photos of the
23 signature marks, it was deployed -- and I think
24 their record indicated that it was deployed a

1 single time. But it was deployed at a minimum
2 based on the signature marks that -- of -- of
3 three times, so he -- so he engaged that -- that
4 trigger three times on the Taser on me.

5 Q. Okay. Did a doctor tell you that?

6 A. Did a doctor tell me that? The
7 photos -- I'm a Taser instructor. I know what the
8 signature marks look like. And when the photos of
9 my injuries were taken, you can see the distinct
10 signature marks. It's two prong marks in multiple
11 locations. And you can hear the multiple
12 deployments. Every time he pulls that trigger, it
13 activates a charge and he did that in sequence
14 multiple spots on my back. It wasn't a single
15 deployment. It wasn't a single trigger pull that
16 he did once and it was done. He kept doing it to
17 me.

18 Q. But you agree that the Taser report for
19 that device showed only one use?

20 A. That's what it shows, but that's not
21 what happened.

22 Q. Okay.

23 A. And the photographs of the injuries are
24 -- I mean, any trained Taser instructor is going

1 to say, yeah, those are multiple signature marks.

2 Q. That was all of the video that I was
3 intending to play.

4 A. Okay.

5 Q. Unless there's any part of it that you
6 wanted played again or anything that you wanted to
7 talk about that you think is important.

8 A. No.

9 Q. Okay.

10 A. I -- I think that's enough of the video
11 for me.

12 Q. Okay. I'll move it over here.

13 A. I --

14 Q. I want to ask you about something that
15 the PRB said --

16 A. Uh-huh.

17 Q. -- in Exhibit 8.

18 On page 5 at the very top, they talk
19 about why Officer Fihe used his Taser.

20 A. Uh-huh.

21 Q. And they said, "Due to your 'turbulent
22 behavior,' which included your refusal to comply
23 with commands, Ofc. Fihe was forced to deploy his
24 Taser so you could be secured in handcuffs." Do

1 you agree with that assessment?

2 A. No. I adamantly disagree with that.

3 Q. Do you -- in your opinion did you
4 comply with the officers' commands?

5 A. At which point? They're -- there were
6 points that I wasn't complying, and there was --
7 there were points where I was absolutely
8 complying. So I don't know which -- which part
9 you're referencing.

10 Q. Fair.

11 I was referencing specifically the
12 commands during the handcuffing, so just the
13 portions after you are on the ground.

14 A. Yeah. I was attempting to comply. I
15 was in no way, shape or form actively resisting.
16 Again, I'm in a position with, you know, likely
17 400 pounds of weight on top of me. I'm not a
18 little pliable flexible guy. I'm trying to do my
19 best, and at the same time trying to put pause on
20 the situation verbally so they'll at least realize
21 that it doesn't have to go to this length. Do I
22 want to be handcuffed? No. I didn't want to be
23 handcuffed. I didn't -- I didn't want any of this
24 to happen. I did my best for it not to happen.

1 But I was doing my best to comply. It's just I'm
2 getting kind of haphazard approach to handcuffing
3 being done, and it wasn't necessary and it
4 actually made the whole process much more
5 difficult for me and for them.

6 Q. Okay. In Exhibit 12, which is the
7 transcript of the interview you had with ATF right
8 after this event?

9 A. Exhibit 12. Okay.

10 Q. I'm looking at pages 28 to 29.

11 A. Okay.

12 Q. Okay. At the top of 28, they ask you
13 sort of boils down to why didn't you submit to
14 being handcuffed until they could calm you down
15 and -- and check your credentials?

16 A. And the question is? I'm sorry.

17 Q. Okay. I was just making sure we were
18 at the right place first.

19 Then on page 29?

20 A. Wait. I'm -- was there a question? I
21 wanted to answer it if there was a question --
22 what was the question?

23 Q. Okay. Sure. Do you -- so my question
24 is going to be they asked you this question about

1 why you didn't submit to handcuff -- handcuffing,
2 and you give sort of a couple of answers about it
3 over the next couple pages.

4 A. Okay. I see what you're saying.

5 Q. And I had a question about a portion of
6 it.

7 A. Okay. Great.

8 Q. But if you want to just answer that
9 question for me and then I can dive into this, but
10 -- so why -- why didn't you make the decision to
11 submit to handcuffing at that time --

12 A. Well, I --

13 Q. -- to being handcuffed?

14 MR. BOND: Objection.

15 A. Well, one, again, it was -- I'm
16 thinking about the fact that I'm in -- I'm in the
17 course of doing my job. This is an on-the-job, I
18 am well under my authority doing what I'm doing,
19 and of course I don't want to be handcuffed. I'm
20 trying to cooperate. It's not -- it wasn't going
21 to be necessarily because I was no threat
22 advantageous for me to be in that situation. I
23 was scared, for one. Two, you know, I'm starting
24 to experience the onset of -- of physical issues

1 that are concerning to me and I'm trying to
2 express that to them. You know, there's all these
3 things coming at me and it's hard to just, you
4 know, like -- I'm -- I'm trying not to resist, at
5 the same time I'm trying to still really
6 communicate with these guys to calm down that --
7 that this is a mistake. What they're doing is a
8 big mistake; it's not necessary. And, you know, I
9 guess I was, you know -- I certainly wasn't
10 actively resisting. I wasn't threatening. I
11 wasn't making threats. I was trying to slow the
12 momentum of the situation down so that a dialogue
13 could be established. I -- if need be, I could
14 have just laid there. I -- I did not want to be
15 handcuffed because now I'm at a further
16 disadvantage and I feel like I'm going down this
17 rabbit hole that I'm not going to be able to get
18 out of in that situation and being confined was --
19 was not a situation that I wanted to be in and
20 still be able to function as a federal agent on
21 the scene of an investigation I was lawfully there
22 to do.

23 Q. Okay. On page 29, sort of in the
24 middle of your answer there, you say, "This is

1 what I'm here doing...so, I'm trying to avoid the
2 whole escalation to everything to the point where
3 now I'm a federal agent handcuffed down on the
4 ground and then -- if they then decide I am who I
5 am, I have to get up, dust myself off, and go back
6 to these people's door." Is that part of what was
7 going through your head during the handcuffing?

8 A. Yeah. That was -- that was not the
9 primary thing going through my head. But, yes,
10 that was at the time of the interview a -- another
11 thought that was -- that had went through my head.
12 And it was -- it was post being handcuffed, but I
13 also knew that having -- as I was finally released
14 from this incident, that was also a -- that was
15 also a thought and a concern that I had that I was
16 treated in this fashion, and now I have to get up
17 and, like, go talk to these people and finish my
18 job as if nothing even happened. And -- and the
19 more they tried to escalate this, the worse it was
20 going to be for me to continue to do my job, which
21 I was there to -- I never even got to finish
22 because of this. So, you know, that was a
23 concern. It was what I brought up at the time of
24 the interview. That wasn't what was going through

1 my head at the time I was on the ground, it was --
2 it was in there, but it was just one of the many
3 things that was -- was why this was so
4 unnecessary. And me being in handcuffs wasn't
5 necessary, and -- and every other thing that
6 happened after the handcuffing wasn't necessary.

7 Q. Would you say that you were trying to
8 think of any possible way to calm this situation
9 down?

10 A. To the best of my ability under what I
11 was being presented with, I -- I was trying. I
12 was trying really, really hard. I -- you know, I
13 -- again, I was -- I'm not dealing with just an
14 officer walking up and just asking me something,
15 and I'm -- I'm just being a -- you know, a smart
16 aleck and -- and uncooperative. The first thing I
17 was greeted with was a firearm -- was an officer
18 approaching me with a firearm out. That starts
19 changing the whole dynamics of things, and it
20 becomes where now I'm being the target -- target
21 of the aggression, and I'm trying to then explain.
22 And the reasons I explained before as to why I
23 didn't want to get on the ground, those have been
24 explained. But I lost my thought. I'm sorry.

1 What was the question?

2 Q. So I -- so I had asked you if you would
3 say that you were trying to think of any possible
4 way to calm the situation down?

5 A. Yes. Yes, I was. I was doing the best
6 I could under the circumstances --

7 Q. Uh-huh.

8 A. -- as their actions were rapidly
9 escalating.

10 Q. Okay.

11 A. So I'm in a very, very reactive type of
12 situation.

13 Q. Okay. In Exhibit 8, which is the
14 notice -- notice of proposed removal, on page 5,
15 they say that -- in the fifth paragraph, "your
16 misconduct was particularly concerning because you
17 refused Ofc. Fihe's commands to get on the ground
18 numerous times, though complying with his commands
19 would have ended in obvious misunderstanding by
20 the responding police officer." Do you think that
21 if you had obeyed the initial commands that that
22 could have calmed the situation down more quickly?

23 A. No. No. I --

24 Q. Okay.

1 A. I wholeheartedly believed at the minute
2 he got out of that vehicle that his intentions
3 were going to be to remove his firearm, approach a
4 nonthreatening, you know, person who's claiming to
5 be an agent. And he was going to want to make
6 sure I was on the ground, handcuffed and put in a
7 car before he did anything. And that was
8 certainly not the reasonable course of action by
9 any officer in this same situation, having the
10 facts and information that were available and made
11 available. So, yes, he -- it wouldn't have
12 changed a thing.

13 Q. Is there anything that you think you
14 could have done better during this interaction?

15 A. I don't think so. I think I did
16 everything that I could possibly do to try to
17 preserve myself from either, you know, any serious
18 injury. You know, I had a lot of -- you know, a
19 lot of responsibilities going on in that moment,
20 and I -- I don't know that I could have did
21 anything differently to change the course of the
22 events in terms of trying to preserve my position
23 and do my job, and at the same time attempt to
24 identify myself. Because this is -- this is a

1 scenario I have never ever been faced with, ever.
2 And I have been in these scenarios, but I've never
3 been faced with an officer's aggression in this
4 very similar situation by any other agency, large
5 or small, federal or state. It's just -- it's
6 just so unorthodox to approach a situation where
7 you have all the obvious in front of you, and yet
8 you feel that that level of force is necessary to
9 simply identify -- identify myself and -- or
10 identify the person you're speaking with or trying
11 -- or are concerned about. So to answer that
12 question, no.

13 Q. Okay. I want to -- you were asked a
14 question when you did an interview with ATF that
15 I --

16 A. Same document?

17 Q. -- want to ask you here. Yeah. It's
18 in Exhibit 12, that one right there. On page 25.

19 MS. PICKERILL: I'm sorry.

20 THE REPORTER: You're fine.

21 BY MS. PICKERILL:

22 Q. They asked you if you were ever to do
23 NICs retrievals and investigations again, is there
24 anything that you would do differently? So is

1 there anything that you would do differently if
2 you were ever to do that again?

3 A. I don't think so. I -- I really don't.
4 I mean, if I'm -- if everything is the -- is the
5 same, I'm thorough, I'm there for the purpose that
6 I'm there, I'm -- I dress appropriately, I look
7 professional, I treat people with -- you know, I'm
8 trying to communicate in a very informative,
9 nonthreatening fashion. And honestly, I -- I
10 would -- I would be expecting that no other
11 officers that responded under a situation where
12 someone was concerned about my identity would act
13 and have that level of aggression. So I didn't do
14 anything wrong. I followed all the protocols and
15 all the policies. I wasn't out of line on
16 anything. Was I scared? Was I confronted with --
17 with, you know, hostility and stuff? Yes. Was I
18 surprised by it? Yes. Did I use some profanity
19 in the response in that surprised fashion? Yeah,
20 I did. But I'm -- I could not believe that I'm --
21 I'm looking down the barrel of another officer's
22 gun while I'm doing my job and, you know, there --
23 there was no secrets to anything. I wasn't
24 undercover. I was just standing there with my

1 hands in the air offering to try to identify
2 myself.

3 So, no, I -- that's -- I personally had
4 developed that manner of doing these cases and it
5 was highly effective. My chain of command knew
6 exactly how I did things. They knew how thorough
7 I was. They knew that there's never been a
8 complaint from any agency or any officer or any
9 citizen has never complained once about how they
10 were treated and questioned my professionalism at
11 all. So, no, I would -- I would do everything the
12 same way and just hope that the responding
13 officers were better trained.

14 Q. Would you recommend that -- would you
15 recommend calling law enforcement ahead of time?

16 A. If you felt like you needed to, of
17 course. That's our discretion to do that. I -- I
18 wouldn't say that it's necessary to call local law
19 enforcement every time you go out to do some -- a
20 routine door knock investigation. Absolutely not,
21 no. It's -- it's no different than -- than what
22 ATF teaches and stresses, and you have that tool
23 in your tool belt, you don't have to use all your
24 tools all the time. They're there for you to use

1 and you're given the discretion as a federal agent
2 to use those tools as needed to facilitate
3 accomplishing your job. Calling local law
4 enforcement every time you're going to go knock on
5 somebody's door is -- is absurd. It's just not a
6 reality. It makes no sense. You're tying up
7 resources from one agency to handle what you can
8 simply handle yourself. And if there is a concern
9 or response, if they respond and they respond
10 appropriately, they're going to assess, okay,
11 here's -- here's what appears to be an agent.
12 Hey, who are you? Identify yourself. I'm a
13 federal agent. Whoa, you know, okay. Do you have
14 some credentials? Yes. They're in my pocket.
15 Okay. Do you want me to get them out? Yes. Go
16 ahead, retrieve them. There's a dia -- I mean I
17 wouldn't expect anything else from -- from a
18 certified law enforcement officer than to create
19 that dialogue after he has assesses obviously this
20 is not a burglary in process. Obviously there's
21 not somebody climbing through to a window. The
22 subject's still standing there. He hasn't took
23 off running. He's trying to talk to me. He's
24 trying to say he's a federal agent. He's making

1 reference to his credentials. He starts
2 referencing state documents that nobody can get.
3 So, no, I -- it would -- it would be the same. It
4 was -- I wouldn't suggest doing anything
5 different. I would suggest that people do these
6 cases as thoroughly as I used to do them and use
7 the tools necessary. And if it requires calling
8 law enforcement, if you feel like it's necessary,
9 great. It's not required. It's not policy. It's
10 merely there for your discretionary use. This did
11 not meet that threshold whatsoever.

12 Q. Did you eventually make a complaint to
13 the Columbus Police Department about this
14 incident?

15 A. A complaint? I -- I don't know and --
16 I don't know that I had any contact with the
17 Columbus Police Department after this incident. I
18 spoke with my chain of command and -- and
19 essentially followed their instructions. If there
20 was a complaint of some sort that was generated by
21 my attorney's office, I can't speak to that. But
22 I personally had no communications with the
23 Columbus Police Department after this event.

24 Q. Okay.

1 A. Other than a phone call that came to
2 me. And I just -- I said I can't -- I just
3 deferred it to my attorney.

4 Q. Okay. So do you recall that phone call
5 being for the internal affairs bureau?

6 A. It may have been that. I can't recall.
7 It was sometime ago.

8 Q. Okay.

9 A. It was somebody that didn't -- said
10 they're from it. And I said, well, I -- I would
11 just have to defer to my attorney. Okay. Thank
12 you. Click.

13 Q. Okay.

14 A. That was it. I don't know who the
15 person -- I don't know if it was -- who it could
16 have been. It could have been -- but they
17 purported themselves to be from the Columbus
18 Police Department. I can't say whether -- who it
19 was.

20 Q. Okay. Did you all have an internal
21 affairs bureau at ATF that would, like, look into
22 conduct and things like that?

23 A. Correct. That's -- that's the --

24 Q. Okay. So just you're familiar with

1 that --

2 A. Yes.

3 Q. -- term and what they do?

4 A. Yes. Yeah.

5 Q. Okay. I'm going -- oh, sorry.

6 A. Yeah.

7 Q. I'm going the play that phone
8 recording. It's not very long. I'm going to mark
9 it as Exhibit 16 to the deposition.

10 - - - - -

11 Thereupon, Exhibit 16 is marked for
12 purposes of identification.

13 - - - - -

14 (Recording played.)

15 BY MS. PICKERILL:

16 Q. I paused it at 40 seconds.

17 A. Uh-huh.

18 Q. Is that you on the phone?

19 A. Yeah, that's me.

20 Q. Okay.

21 A. Yeah. That's -- that's -- that would
22 be the phone call I think I was referencing.

23 Q. Okay. I'm just going to play it until
24 the end real fast.

1 (Recording played.)

2 BY MS. PICKERILL:

3 Q. That's officially the end of that
4 recording.

5 A. Uh-huh.

6 Q. Same as you remember it? There wasn't
7 anything new in there?

8 A. Yeah, it was. There was probably a
9 couple other little ho, hums or whatever in there.
10 But, yeah, it was somebody that purported
11 themselves to be from the police department, asked
12 me if I -- and, you know -- and I did what I
13 thought was best and what my -- when I then called
14 my chain of command after the fact and said --
15 they said, yeah, absolutely not. Don't -- you
16 know, it's on a -- you did the right thing. And I
17 said, okay, just making sure.

18 Q. Yeah. So my only question was going to
19 be if you ever did follow-up. And it sounds like
20 the answer is no; is that right?

21 A. I only followed up in the fashion that
22 I followed up in, not directing -- not having any
23 contact or additional statements with the Columbus
24 PD.

1 MS. PICKERILL: Okay. Would you mind
2 if we took a quick break for a chat real fast?

3 THE VIDEOGRAPHER: We are off the
4 record. The time is 2:28.

5 (A short recess is taken.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 2:36.

8 MS. PICKERILL: Okay. Thank you very
9 much, Mr. Burk. We have no more questions for you
10 today.

11 THE WITNESS: Okay.

12 MS. PICKERILL: We might meet with you
13 again over Zoom in a couple months to talk more
14 specifically about damages. But we really
15 appreciate you coming up to answer our questions
16 and to talk with us about your lawsuit. So --

17 THE WITNESS: Thank you.

18 MS. PICKERILL: Thank you very much.

19 THE WITNESS: I appreciate it.

20 THE VIDEOGRAPHER: This -- this
21 concludes the deposition of James A. Burk, Junior.
22 We are off the record at 2:36.

23 (Signature not waived.)

24 - - - - -

1 Thereupon, the foregoing proceedings
2 concluded at 2:36 p.m.

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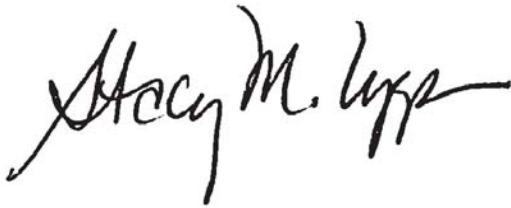
1 State of Ohio : C E R T I F I C A T E
2 County of Franklin: SS

3 I, Stacy M. Upp, a Notary Public in and for
4 the State of Ohio, certify that James A. Burk, Jr.
5 was by me duly sworn to testify to the whole truth
6 in the cause aforesaid; testimony then given was
7 reduced to stenotype in the presence of said
8 witness, afterwards transcribed by me; the
9 foregoing is a true record of the testimony so
10 given; and this deposition was taken at the time
11 and place specified on the title page.

12 Pursuant to Rule 30(e) of the Federal Rules of
13 Civil Procedure, the witness and/or the parties
14 have not waived review of the deposition
15 transcript.

16 I certify I am not a relative, employee,
17 attorney or counsel of any of the parties hereto,
18 and further I am not a relative or employee of any
19 attorney or counsel employed by the parties
20 hereto, or financially interested in the action.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand and affixed my seal of office at Columbus,
23 Ohio, on June 26, 2023.

24 

Stacy M. Upp, Notary Public - State of Ohio
My commission expires August 6, 2026.

Witness Errata and Signature Sheet
Correction or Change Reason Code
1-Misspelling 2-Word Omitted 3-Wrong Word
4-Clarification 5-Other (Please explain)

Page/Line	Correction or Change	Reason Code
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I, James A. Burk, Jr., have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date_____Signature_____

Ref: SU308315JB